

Reserved

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32428 of 2009

Petitioner :- Gufran Ahmad

Respondent :- State Of U.P.

Petitioner Counsel :- Ajay Kumar Pandey, Anil Kumar Shukla, Shri Satish Trivedi

Respondent Counsel :- Govt Advocate

AND

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33250 of 2009

Petitioner :- Muslim @ Guddu

Respondent :- State Of U.P.

Petitioner Counsel :- Khan Saulat Hanif, Ravindra Sharma

Respondent Counsel :- Govt. Advocate

Hon'ble Shri Kant Tripathi, J.

1. These two bail applications have been filed relating to the same case crime no. 34 of 2005 under sections 147, 148, 149, 302, 307, 506 and 120-B IPC and section 7 of the Criminal Law Amendment Act, police station Dhoomanganj, district Allahabad, hence are being disposed of by this common order.

2. Heard Mr. Satish Trivedi, learned senior counsel for the applicant Gufran Ahmad and Mr. Ravindra Sharma for the applicant Muslim @ Guddu, Mr. Mewa Lal Shukla, learned AGA for the State and perused the record.

3. According to the allegations made in the FIR on 25.1.2005 at about 3.00 PM, the complainant's husband Raju Pal (an MLA) and his associates Devi Lal Pall and Sandeep Yadav were killed by seven-eight persons. Three persons, namely, Om Prakash, Saifulla and Smt. Rukhsana sustained gun shot injuries. It is alleged in the FIR that Mr. Atiq Ahmad, the then Member of Parliament, belonging to the Samajwadi Party, managed the murder of the complainant's husband with the help of 7-8 persons including his brother Ashraf, who had contested an election against the complainant's husband. The police investigated the matter and submitted charge sheet against Atiq Ahmad, his brother Ashraf and other persons, against whom the trial continued and as many as fourteen witnesses were examined but none of them supported the prosecution story. In the meantime Bahujan Samajwadi Party came in power in the State, consequently a further investigation, was directed to be held by CB CID, and the CB CID, after investigation submitted a supplementary charge sheet against the applicants and other accused.

4. The learned counsel for the applicants submitted that all the accused persons mentioned in the first charge sheet, and also the co-accused Nafees Ahmad @ Nafees Kalia mentioned in the supplementary charge sheet, have already been enlarged on bail, therefore, both the applicants are entitled to bail on the ground of parity. The learned counsel further submitted that the supplementary charge sheet is nothing except a concocted version at the behest of the ruling party. It was further submitted that none of the witnesses examined during the trial against the accused mentioned in the first charge sheet, has supported the prosecution story, therefore, it is a case of no evidence. It was further submitted that the deceased Raju Pal had a criminal history of 27 cases (Annexure X), therefore, a possibility of his killing by some other person can not be ruled out.

5. Mr. Mewa Lal Shukla, learned AGA submitted that co-accused Atiq Ahmad, his brother Ashraf and other accused persons are persons of criminal background and

no one dares to give evidence against them in the court. It was also submitted that in view of the fact that most of the witnesses have already turned hostile in the trial being held against the accused persons cited in the first charge sheet, it can be easily inferred that there is much possibility of reasonable apprehension of tampering with the witnesses cited in the supplementary charge sheet against the applicants and other accused. The learned AGA further submitted that first information reports by the witnesses cited in the supplementary charge sheet have also been lodged with the allegations that Mr. Atiq Ahmad and other accused persons tried to give threatening to the witnesses and thereby they attempted to tamper with the evidence. Even the witnesses, cited in the first information reports lodged against the tampering of the witnesses, have also been given threatening and they have also lodged FIR. In this view of the matter release of the applicants on bail would not be proper. Learned AGA further submitted that co-accused Nafees Ahmad @ Nafees Kalia was granted bail on the ground that he was suffering from Liver Cancer, therefore, the applicants are not entitled to bail on the ground of parity.

6. In rebuttal, the learned counsel for the applicants submitted that the applicants' name had not come in to light during the course of first investigation, therefore, the supplementary charge sheet has been filed only on the basis of manufactured evidence. The learned counsel further submitted that no doubt in the supplementary charge sheet names of two new witnesses, namely, Gore Lal and Ramesh Pal, have been cited but these two witnesses have not assigned any role to the applicants. The disclosure of the names of the applicants and other accused cited in the supplementary charge sheet after about three and a half year, has no legal sanctity. There is no allegation that the applicants were also involved in tampering with the witnesses and the FIR lodged by the witnesses is silent in this regard, therefore, the apprehension that the applicants will tamper with the witnesses has no substance.

7. It is a case of broad day light brutal murder of three persons including an MLA allegedly on account of a political vendetta because the deceased Raju Pal had defeated the co-accused Ashraf in the assembly election. The Apex Court has settled the legal principles in bail matters relating to heinous crimes like murder etc. in various decisions and they are the cases of ***State of U.P. through CBI vs. Amarmani Tripathi, (2005) 8 SCC 21, Prahlad Singh Bhati vs. NCT, Delhi and another, (2001) 4 SCC 280, Ram Govind Upadhyay vs. Sudarshan Singh & others, (2002) 3 SCC 598, State of Maharashtra vs. Ritesh (2001) 4 SCC 224, Panchanan Mishra vs. Digambar Mishra & others (2005) 3 SCC 143, Vijay Kumar vs. Narendra & others (2002) 9 SCC 364 and Anwari Begum vs. Sher Mohammad & another (2005) 7 SCC 326.*** The Apex Court has propounded the principle that at the stage of bail the court should avoid elaborate examination of the evidence and detailed reasons touching the merits of the case which may cause prejudice to the accused but it is also necessary to indicate the reasons for prima facie concluding why bail is being granted particularly where the accused is charged of having committed a serious offence. The discretion conferred on the court in bail matters should be exercised judiciously, cautiously and strictly in compliance with the settled principles, which among other circumstances are:

- (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing , if released on bail;
- (v) character, behaviour, means, position and standing of the accused;

- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

8. In the present case, the applicants have claimed bail mainly on the ground that all the co-accused persons mentioned in the first charge sheet have already been enlarged on bail. Even co-accused Nafees Ahmad @ Nafees Kalia mentioned in the supplementary charge sheet has also been enlarged on bail. The other grounds for claiming bail are that the witnesses kept silence for a long period and disclosed the names of the applicants after about three and a half year of the occurrence. This Court (Hon'ble Saroj Bala, J.) took into account this aspect of the matter while enlarging the co-accused Nafees Ahmad @ Nafees Kalia on bail, therefore, according to the counsel for the applicants this ground is also available to the applicants. In this connection, learned AGA pointed out that the witnesses who have supported the prosecution case against the applicants were not properly interrogated by the first investigating officer on account of political influence of the then ruling party and as such the ground that the witnesses disclosed the names of the applicants after about three and a half year of the occurrence has no relevance.

9. It may not be out of context to mention that most of the witnesses interrogated under section 161 of the Code of Criminal Procedure in support of the supplementary charge sheet have supported the prosecution story and involvement of the applicants in committing the murder of the deceased persons.

10. The question of granting bail to an accused on the ground of parity of bail granted in favour of the co-accused has been considered by a Full Bench of this Court in **Sunder Lal v State 1983 Cr.L.J. 736**. The Full Bench observed in paragraph 15, as follows:

"The learned Single Judge since has referred the while case for decision by the Full Bench, we called upon the learned Counsel for the applicant to argue the case on merits. The learned Counsel only pointed out that by reasons of fact that other co-accused has been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant to bail who is involved in a triple murder case...."

11. The aforesaid question was again examined by a Division Bench in **Nanha Vs. State 1993 Cr LJ 938**. In Nanha's case Hon'ble G.D. Dubey, J held as follows in para 24:

"My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail application of the co-accused whose bail had been earlier rejected are allowed and co-accused is released on bail. Even then the Court has to satisfy itself that, on consideration of more material placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the Court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released

on bail. "

12. Hon'ble Virendra Saran, J. held in paragraph 61 as follows:

"My answer to the points referred to is that if on examination of a given case it transpires that the case of the applicant before Court is identical, similar to the accused, on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail (Exceptional cases as discussed above apart)....)"

13. Another Division Bench of this Court considered the aforesaid question again in **Chander alias Chandra v State of U.P. 1998 All.L.J. 870** and held as follows:

"21. Our answers to the questions referred are as follows :

1. If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the ground of parity.

2. A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant factors essential for granting bail.-

3.....

4....."

14. It is, therefore, well settled that the question of extending parity to the applicant-accused does not arise in a case, where the bail order passed in favour of the co-accused is not supported with any reasons or it has been passed in flagrant violations of well settled principles or it has not taken into consideration relevant materials having bearing on the question of bail or new material, evidence or circumstance has cropped up after the release of the co-accused on bail. If the bail in favour of the co-accused has been granted with reasons on merits and the case of the applicant is identical in all respect and every relevant material of the case had been taken into consideration while enlarging the co-accused on bail and no new or fresh material or evidence surfaced thereafter and also there was no violation of any settled legal principles, it is desirable to grant bail to the applicant for maintaining consistency. Whether or not the parity is to be extended to the applicant, is a question of fact which needs to be examined in each and every case independently keeping in view the facts and circumstances of the case and no straight jacket formula or hard and fast rule can be laid down in this regard.

15. If the facts of the present case are considered in the light of the aforesaid principles, the question of grant of bail to the applicants on the ground of parity does not arise. After release of the named accused Ashraf (an accused of the first charge sheet) certain important developments took place and one of the developments is that 14 witnesses examined during the trial being held in pursuance of the first charge sheet against co-accused did not support the prosecution story in the court. The other witnesses made allegations by lodging reports that they had been pressurised and terrorised by the accused persons for not supporting the prosecution story. In view of this subsequent developments the bail granted in favour of the named accused Ashraf can not be taken as a ground to enlarge the applicants on bail. Moreover, in the bail order passed in favour of the other co-accused Nafees Ahmad @ Nafees Kalia by Hon'ble Saroj Bala, J.,

these developments had not been taken into account. Co-accused Nafees Ahmad @ Nafees Kalia was granted bail mainly on the ground that he was a patient of Liver cancer and his name surfaced after about three and a half year of occurrence and named accused Ashraf had been bailed out. In my opinion these three grounds do not survive in the present case in view of serious allegations of threatening to the witnesses as well as hostility of the witnesses examined during the trial. Therefore, the question of parity in such situation does not arise.

16. As observed by the Apex Court in the case of **Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others, (2004) 4 SCC 158**, witnesses are the eyes and ears of justice. If the witnesses themselves are incapable of giving evidence during the trial on account of threats, coercion, lures and monetary considerations at the instance of mighty accused or person in power, the justice is bound to be polluted and the concept of fair trial would be a nugatory, which would ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined in our Constitution. Therefore, it is necessary and expedient not only to provide safeguards to witnesses but also to ensure their safe examination during the trial. As such a heavy duty is cast upon the State to provide adequate safeguards to the witnesses, from the persons having political patronage, muscle and money power. The Apex Court, after considering all these things in Zahira's case (supra), has expressed that "*.....There comes the need for protecting the witnesses. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and the trial is not reduced to a mockery. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before courts mere mock trials as are usually seen in movies.*" Therefore, if in any case relating to heinous crime like murder serious allegations of threatening to, or tampering with, the witnesses are made against the accused and the allegations are not in any way baseless, it is always just and expedient in the interest of justice to deny bail to the accused in such matter.

17. In the present case, the prosecution witnesses have made serious allegations of threatening having been made by the accused persons and they had even lodged first information reports against some of the accused, and also all the witnesses examined during the trial against the co-accused persons have turned hostile, therefore, it will not be proper to enlarge the applicants on bail only on the ground that co-accused Nafees Ahmad @ Nafees Kalia and Ashraf have already been enlarged on bail and his name surfaced after three and a half year of the occurrence specially when during the course of first investigation, the political party in power is alleged to have given full protection to the main accused named in the first charge sheet, and as such the truth is alleged to have been suppressed during that period which resulted in suppressing the names of some of the main accused persons. In this view of the matter, the delay of three and a half year in disclosing the names of the applications and other accused, prima facie, has no substance.

18. Keeping in view the facts and circumstances of the case, gravity of the crime, complicity of the applicants, the nature of evidence and reasonable apprehension of tampering with the witnesses, I do not consider it proper to release the applicants on bail.

19. Both the bail applications are, therefore, rejected.

Order Date :- 24.02-2011

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