

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10201 of 2021

Applicant :- Alok Kumar @ Kallu Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Anand Kumar Singh, Anil Kumar Srivastava (Senior Adv.), Ram Bahadur

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Anil Srivastava, learned Senior Advocate assisted by Sri Anand Kumar Singh and Sri P.P. Yadav, Advocates for applicant through Video Conferencing and learned A.G.A. for State.
2. Applicant-Alok Kumar alias Kallu Yadav, has approached this Court by way of filing the present Criminal Misc. Bail Application under Section 439 Cr.P.C. after rejection of his Bail Application vide order dated 15.10.2020, passed by Additional Sessions Judge / Fast Track Court No. 26, Allahabad, in Case Crime No.429 of 2016, under Sections 147, 148, 149, 302, 307/34 IPC and 7 Criminal Law Amendment Act, Police Station Naini, District Prayagraj (Allahabad).
3. Learned Senior Advocate appearing for applicant, submits that in the occurrence in question applicant is one of the named accused, which are 10 in numbers. Five co-accused have already been enlarged on bail by different orders passed by Coordinate Benches of this Court. Learned Senior Advocate submitted that general role was assigned to all accused in the FIR. The Informant in his statement recorded under Section 161 Cr.P.C. has specified role of firing to some of the co-accused, out of whom four co-accused have been granted bail. No specific role has been assigned either of firing or throwing bomb on applicant. Even in trial the Informant has not assigned any specific role on applicant. Applicant has criminal history of three cases, out of which in one case he has been acquitted, in another applicant is on bail and the third case is arising out of present occurrence. Lastly, it is submitted that applicant is languishing in jail since 20.06.2020 and in case, he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.
4. Learned A.G.A appearing for State has opposed the prayer for bail and

submits that in the present case due to indiscriminate firing and assault two persons died and as many as five persons were injured. The deceased, Lalta received two firearm entry wounds and deceased, Gyan Chand received nine firearm entry wounds. Some of the injured have received gun shot injuries also. This is a broad daylight occurrence. However, it is not disputed that even the co-accused, who have been assigned role of firing, are enlarged on bail by this Court.

5(A) Law on bail is well settled that 'Bail is rule and Jail is an exception'. Bail should not be granted or rejected in a mechanical manner as it concerns liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as existence of a prima facie case against the accused, gravity of the allegations, severity of punishment, position and status of the accused, likelihood of the accused fleeing from justice and repeating the offence, reasonable apprehension of tampering with the witnesses and obstructing the Courts as well as criminal antecedents of the accused.

(B) It is also well settled that the Court while considering an application for bail must not go into deep merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered.

(C) It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. The Court should record the reasons which have weighed with the court for the exercise of its discretionary power for an order granting or rejecting bail. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

(D) The Court while granting bail in the case involving sexual offence against a woman should not mandate such bail conditions, which are against the mandate of "fair justice" to victim such as to make any form of compromise or marriage with the accused etc. and shall take into consideration the directions

passed by Supreme Court in **Aparna Bhat and others vs. State of Madhya Pradesh and another, 2021 SCC Online SC 230**, in this regard.

6. Considering the rival submissions, material available on record, the period of detention already undergone, the unlikelihood of early conclusion of trial, absence of any convincing material to indicate the possibility of tempering with the evidence, relevant factors mentioned above, particularly that applicant has not been assigned role of firing or throwing bomb during occurrence; Informant in his statement recorded under Section 161 Cr.P.C. as well as before Trial Court, has not assigned any specific role on applicant; Coordinate Benches of this Court have granted bail to as many as five co-accused and even the accused persons who have been assigned role of firing; applicant has disclosed criminal history of three cases; he is languishing in jail since 20.06.2020, as also considering the prevailing situation due to COVID-19, this Court is of the view that a case of grant of bail is made out.

7. Let the applicant- **Alok Kumar alias Kallu Yadav** be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions which are being imposed in the interest of justice:-

- (i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.
- (ii) The applicant will abide the orders of Court, will attend the Court on every date and will not delay the disposal of trial in any manner whatsoever.
- (iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.
- (iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C., may be issued and if applicant fails to appear before the Court

on the date fixed in such proclamation, then, the Trial Court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the Trial Court may proceed against him under Section 229-A IPC.

(vi) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

8. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

9. The bail application is allowed.

10. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

11. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

12. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

13. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 30.6.2021

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