

Neutral Citation No. - 2024:AHC:154484

Reserved on :02.09.2024

Delivered on : 21.09.2024

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56071 of 2023

Applicant :- Mohammad Azam Khan And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Imran Ullah, Mohammad Khalid

Counsel for Opposite Party :- G.A., Sharad Sharma

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7410 of 2023

Applicant :- Azhar Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Imran Ullah, Mohammad Khalid, Sanjay Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. These two bail applications arise out of the same case crime number and have been connected *vide* order dated 26.07.2024 passed by a co-ordinate Bench of this Court. The accused-applicants are co-accused in the matter. The same have been heard together and are being decided by this order.
2. Heard Sri Imran Ullah and Sri Mohammad Khalid, learned counsel for the applicants, Sri P.C. Srivastava, learned Additional Advocate General and Sri J.K. Upadhyay, learned A.G.A. for the State as well as Sri Sharad Sharma, learned counsel for the first informant.
3. The present bail applications have been filed on behalf of the applicants – Mohammad Azam Khan and Mohammad Abdullah Azam Khan with a prayer to release them on bail in Case Crime No.211 of 2022, under Sections 409, 411, 201, 120B IPC and Sections 2/3 Damages to Public Property Act,

Police Station Kotwali District Rampur and on behalf of the the applicant - Azhar Khan (in connected matter) with a prayer to release him on bail in Case Crime No.211 of 2022, under Sections 409, 120B I.P.C. and Sections 2/3 Public Property (Prevention of Damages) Act, Police Station Kotwali, District Rampur, during the pendency of the trial.

4. The facts of the matter are that a first information report was lodged on 19.09.2022 by Waqar Ali Khan under Sections 409, 120B IPC and Section 2/3 of the Damages to Public Property Act, 1984 against Mohammad Azam Khan, Mohammad Abdullah Azam, Azhar Khan, Sultan Mohammad Khan, Anwar Hussain, Salim and Talib describing himself as a social worker. It is alleged that the previous S.P. Government had purchased machines for cleaning, from government money, but the said machines were being used by Mohammad Azam Khan, the Chancellor of the Jauhar University and Mohammad Abdullah Azam in conspiracy with Azhar Khan, the previous Chairman of Nagar Palika, Rampur in the Jauhar University. During the regime of the new Government, the machines were being searched, wherein on the instructions of Mohammad Azam Khan, the Chancellor, Sultan Mohammad Khan, the Deputy Chancellor, Abdullah Azam Khan with Anwar Hussain, Salim and Talib, the canteen incharge of the University and others managed to conceal the machine and the machine was cut and buried, a report be lodged and action be taken.

5. On the report being lodged, the investigation took place and a recovery was done on 19.09.2022 in presence of accused Anwar Hussain, wherein in the bushes, in the University campus, a machine was taken out. The parts as recovered have been mentioned in the recovery memo. At the time of recovery, Sri Alam, an employee of the University, Nazim, a security guard and Raju Singh were present. The parts of the recovered machines were heavy and thus they were transpored with the help of a machine, a recovery memo was drawn regarding the said recovery. The matter was investigated and a charge sheet dated 15.11.2022 was submitted against Mohammad Azam Khan,

Mohammad Abdullah Azam for offences under Sections 409, 120-B, 411, 201 IPC and Sections 2/3 of the Damages to Public Property Act, 1984 and against Anwar Hussain, Salim and Talib for offences under Sections 120B, 411, 201 IPC and Sections 2/3 of the Damages to Public Property Act, 1984. Insofar as Sultan Mohammad Khan is concerned, he was exonerated in the matter and his name surfaced in column 12 of the chargesheet in the persons not chargesheeted. The court concerned vide its order dated 16.11.2022 took cognizance upon the charge sheet.

6. Learned counsel for the applicants submitted that the applicants have been falsely implicated in the present case. It is submitted that the applicant Mohammad Azam Khan is the Chancellor of the Jauhar University, Rampur and the applicant Azhar Khan was the then Chairman of Nagar Palika Parishad, Rampur. It is submitted that the applicant Mohammad Azam Khan is a politician and till January 2023, he was serving as a Member of the Legislative Assembly from Rampur Constituency. He is one of the founder members of Samajwadi Party, which is presently the main opposition party in the Uttar Pradesh Legislative Assembly. He is a social worker, founder and Chancellor of the Mohammad Ali Jauhar University, Rampur, which was established by Mohammad Ali Jauhar University Act, 2005. It is submitted that the applicant Mohammad Abdullah Azam Khan is the son of Mohammad Azam Khan and is also a Member of the Samajwadi Party, he is a social worker and was elected as a Member of the Legislative Assembly from Swar Constituency for two consecutive terms. Learned counsel has submitted that there has been a difference of the engine number as recorded in the documents with regards to the alleged recovered machine and the one sent for testing. It is further submitted that the company had given a letter to the Investigating Officer with regard to a sweeping machine/road cleaner machine, which bears a different number. It is further submitted that the company gave a letter dated 27.09.2022 to the Investigating Officer, which states of a vehicle being replaced by another vehicle which also bears a different number. It is further

submitted that the said parts of alleged vehicle as recovered have been falsely shown to be used by the University. It is submitted that the present case is only for the reason of falsely implicating the applicants and tarnishing their image. It is submitted that there is no evidence whatsoever of any such machine being received by the Nagar Palika Parishad. The invoice No.22 issued by the company shows a vehicle to be delivered to the company itself as a consigner. It is submitted that the applicant Mohammad Azam Khan has been falsely implicated in many criminal cases only because of political vengeance, in which, his family including his son, who is also an applicant has been implicated. It is submitted that the applicants Mohammad Azam Khan and Mohammad Abdullah Azam Khan are in jail since 18.10.2023 whereas, the applicant Azhar Khan is in jail since 26.03.2022.

7. Insofar as the applicant Azhar Khan is concerned, it is submitted that he was the then Chairman of Nagar Palika Parishad, Rampur and has been implicated in the matter only because of the reason that he was the Chairman of the Nagar Palika Parishad. It is submitted that the applicant has no concern with the alleged recovery and has been falsely implicated.

8. *Per contra*, learned counsel for the State and learned counsel for the first informant vehemently opposed the prayer for bail. Learned counsel for the State submitted that in the present matter, five machines for cleaning purposes were purchased by Nagar Palika Parishad and one machine was given free of cost by the company. The machine, which was given free of cost for demonstration purposes and was not for sale was taken away by the applicant accused Mohammad Azam Khan for its use in his University and the machine was employed in his University for work. It is submitted that the said machine was having some defect and thus was replaced by another machine free of cost by the company. The same was with regards to the Invoice No.22 dated 08.04.2014, which was for the replacement of machine. The said vehicle was also in the name of the Executive Officer, Nagar Palika Parishad, Rampur. It is submitted that the recovery is a genuine and an actual recovery of parts of

the vehicle, which were buried in mud, in which, the employees of the University were witnesses. It is submitted that insofar as the chassis number of the vehicle is concerned, the same is found to be the same in all the documents. It is further submitted that the present case is such, in which, the accused applicant Mohammad Azam Khan misused his position as being a Minister and an MLA and during his tenure cleaning machines were purchased by the Nagar Palika Parishad, in which, he somehow managed to get one machine free of cost for its use in his University. It is submitted that the applicant Mohammad Azam Khan is involved in as many as 104 criminal cases, the list whereof is Annexure CA-I to the counter affidavit. It is submitted that even in six cases, he has been convicted by the concerned trial court, the list of the cases and the awarded punishment is at page 34 of the counter affidavit. It is further submitted that co-accused Mohammad Abdullah Azam is also having a criminal history of 47 cases and has been convicted in two cases by the concerned trial court, the details of the said cases and the conviction are at page 35-36 of the counter affidavit. It is submitted that insofar as co-accused Azhar Khan is concerned, he was the then Chairman of the Nagar Palika Parishad. He was also in active connivance of the accused applicant Mohammad Azam Khan due to which one machine was managed to be taken from the company free of cost and was being utilized by the University of Mohammad Azam Khan. It is submitted that there was no relevant entry in the records of the Nagar Palika Parishad regarding the machine taken free of cost from the company by misuse of position. It is submitted by placing page 111 of the counter affidavit filed in the case of Azhar Khan that he is also involved in 24 criminal cases. It is submitted that there are good chances that if the accused applicants are granted bail then they may tamper with evidence and threaten the witnesses and not cooperate in the trial.

9. Learned counsel for the State has produced before the Court an order dated 31.08.2024 passed in Criminal Appeal No.4766 of 2024 (Aley Hasan

Khan vs. State of UP), which is connected with three other criminal appeals being that of co-accused Barquat Ali Thekedar @ Faqir Mohd, Mohammad Azam Khan and Azhar Khan and has submitted that the said appeals have been filed against the judgment and order dated 18.03.2024 passed by the Additional Sessions Judge/Special Judge (MP/MLA), Rampur in Sessions Trial No.26 of 2021 (State of U.P. Vs. Mohd. Azam Khan and others) as well as Sessions Trial No.26-A of 2021 (State of U.P. Vs. Azhar Khan), in which the prayer for bail/suspension of sentence has been rejected by a co-ordinate Bench of this Court. It is submitted that as such the seriousness of the offence was considered and the same goes to show that the applicants Mohammad Azam Khan and Azhar Khan, who are appellants in the said matter are involved in it. It is submitted that as such the prayer for bail be rejected.

10. After having heard learned counsel for the parties and perusing the records, it transpires that one of the bail applications have been filed by accused applicants - Mohammad Azam Khan and Mohammad Abdullah Azam Khan and the other bail application has been filed by accused applicant Azhar Khan. The applicant Mohammad Azam Khan is the founder and Chancellor of Mohammad Ali Jauhar University, Rampur. The accused applicant Azhar Khan was the then Chairman of Nagar Palika Parishad, Rampur. The case of the prosecution is of the University using a cleaning machine of Nagar Palika Parishad illegally and then on suspicion of being caught the same was cut and buried in mud. The cut parts of the vehicle were recovered and excavated during investigation in the presence of staff/officials of the University. The parts as recovered were so big and heavy that they had to be transported using machines. The Nagar Palika Parishad had purchased five such machines earlier when the applicant Mohammad Azam Khan was an MLA and a Minister and the applicant Azhar Khan was the then Chairman of the Nagar Palika Parishad. At the said time, one such machine was taken free of cost from the company, the said machine is being stated to have been used and employed in the work of the University. On apprehension of getting

caught, the same was cut and buried, which was recovered by excavating from the mud. The applicant Mohammad Azam Khan was holding such post that he had managed to get a vehicle from the company and employ it in the use of the University, which was not permissible. The applicant Azhar Khan was the then Chairman of Nagar Palika Parishad during whose tenure the entire work of purchase was done and as such he was well aware of the facts and was in connivance due to which one such machine was taken to the University for being used therein. All the three applicants have criminal histories, which are large in number. Accused applicants Mohammad Azam Khan and Mohammad Abdullah Azam Khan have even been convicted in some cases by the concerned trial courts. The matter is such in which their release at this moment may have an adverse affect in the trial since the witnesses of recovery are officials and workers of the University and even they may tamper with evidence. The bail applications, as such, are **rejected** at this stage.

11. However, the applicants shall be at liberty to renew their prayer for bail once the witnesses of fact have been examined by the trial court. The trial court is directed to proceed with the trial, expeditiously subject to any legal impediment.

Order Date :-21.9.2024

Priya

(Samit Gopal, J.)