

**Neutral Citation No. - 2023:AHC:114138**

**A.F.R.**

**Reserved on 5.5.2023**

**Delivered on 23.5.2023**

**Court No. - 74**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14987 of 2023

**Applicant :-** Vijay Mishra

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Saurabh Raj Srivastava, Sr. Advocate

**Counsel for Opposite Party :-** G.A., Abhishek Kumar Yadav, Ratnendu Kumar Singh

**Hon'ble Sameer Jain, J.**

1. The instant bail application is listed before this Bench by the order of Hon'ble the Chief Justice dated 6.4.2023.

2. Heard Sri G. S. Chaturvedi, learned Senior Counsel assisted by Sri Saurabh Raj Srivastava, learned counsel for the applicant; Sri Ratnendu Kr. Singh, learned AGA for the State-respondent and Sri Abhishek Kr. Yadav, learned counsel for the informant.

**Brief facts:-**

3. FIR of the case was lodged on 1.9.2021. According to the FIR, applicant and his son forcibly took possession over the land of the informant including his Firms and in this regard, informant lodged an FIR against the applicant, his wife and his son at P.S. Gopiganj, District Bhadhoi at case crime No. 273 of 2020 and after registration of the above noted case applicant and his family members are continuously threatening the informant and pressuring him to withdraw the case and in this regard, son of the informant lodged an FIR at P.S. Gopiganj.

4. It is further mentioned in the FIR that applicant forcibly on

the basis of illegal weapons has taken away the 19 vehicles of the informant and with the help of those vehicles, he is doing his illegal activities. It is further mentioned in the FIR that applicant also has taken possession of 20 bigha land of the informant and also prepared forged document of the same and got executed a fake sale deed in favour of his family members. As per FIR, applicant is detained in Agra jail and he is having criminal history of more than 84 cases and he is also one of the main accused in the case of causing serious injuries to Nand Kumar Gupta @ Nandi.

**Submission advanced on behalf of the applicant:-**

5. Learned counsel for the applicant submitted that entire allegations made against the applicant are totally false and baseless and applicant is a respectable person of the society and he was four consecutive times M.P. from Giyanpur, Bhadoi and entire story set up by the informant is politically motivated and admittedly at the time of lodgement of the FIR of the present case applicant was in jail in connection with another case.

6. He further submitted that applicant was not made accused in the present matter and he was made accused during investigation with the aid of section 120 B IPC. He next submitted that applicant and informant are family members and dozens of civil and criminal cases are pending between them. He further urged that applicant was arrested on 14.8.2020 pursuant to the FIR bearing case crime No. 273 of 2020 lodged by the informant and thereafter informant and his sons alongwith their associates with the help of local police lodged 15 frivolous FIRs against applicant and his family members.

7. He further submitted that actually vehicles which were disclosed in the FIR belong to the partnership Firm, M/s Krishna Mohan Tiwari and with regard to the partnership Firm, a dispute is pending between informant and family of the applicant. He further submitted that in the above partnership Firm, wife of the applicant is also one of the partner alongwith the informant and one Ashok Kumar and dispute with regard to the partnership Firm has travelled up to this Court and against the order passed by District Judge, wife of the applicant and informant both filed an appeal under section 37 of Arbitration and Conciliation Act and on 22.3.2021 this Court directed the informant to prepare separate account with regard to sale and purchase of the property of the partnership Firm. He further submitted that on 5.8.2021, this Court clubbed both the aforesaid appeal filed by the wife of applicant and informant.

8. He further submits that in the Arbitration Petition in Schedule-III, 46 heavy vehicles are mentioned as vehicles of the Firm and these include the vehicles mentioned in the FIR and therefore, this fact clearly suggest that the allegation with regard to the forceful possession of the vehicles mentioned in the FIR are totally false and in fact these vehicles are the property of the partnership Firm and dispute, with regard to the partnership Firm, is pending between both the parties.

9. He further submitted that informant, being active partner of the aforesaid Firm, has alienated most of the vehicles of the partnership Firm and on 11.8.2021 wife of the applicant and another partner moved an application before this Court with a prayer to direct the informant to deposit the amount realized by him after selling the movable property of the partnership

Firm M/s Krishna Mohan Tiwari.

10. He further submitted that although as per the prosecution, six vehicles were recovered from the premises of the applicant on 20.11.2021 but out of six vehicles, four vehicles were not even mentioned in the FIR of the present case and only two vehicles which were alleged to have been recovered are mentioned in the FIR and both are exclusive property of the Firm, M/s Krishna Mohan Tiwari and are part of the arbitration proceeding. He further submitted that applicant is having no concern with remaining vehicles as neither these vehicles are in the name of applicant nor these vehicles are being used by the applicant.

11. He further submitted that partners of the Firm also preferred a petition under section 11 for appointment of the Arbitrator and on 16.9.2022 this Court has appointed Hon'ble Justice Vineet Saran, a retired Judge of the Supreme Court as Arbitrator.

12. He further submitted that multiple cases under Negotiable Instrument Acts are also pending between the family of the informant and the family of the applicant. He further submitted that multiple civil disputes are also pending between the families of both the sides.

13. He further submitted that although in the FIR, it is alleged that applicant took forcible possession of 19 vehicles but neither date nor time nor place has been mentioned. He further submits informant neither furnished any information to the police about the incident of alleged forceful possession of the vehicle by the applicant.

14. He further urged that due to the political rivalry and being opposition MLA various criminal cases were lodged against

the applicant and till today, applicant has been implicated in as many as 85 cases but out of 85 cases, only in 13 cases applicant is facing trial and in other cases applicant has already either acquitted or proceedings have been dropped by the prosecution. He further submitted that out of 13 cases 8 cases are after the arrest of applicant i.e. after 14.8.2020. He further submitted that only on the basis of criminal antecedents of an accused, bail should not be refused if otherwise case of bail is made out.

15. He further submitted that although applicant is in jail since 14.8.2020 with regard to another case but in the present matter also applicant is in jail for almost one and a half years. He lastly urged that informant is also having criminal history of 9 cases and therefore, considering the facts and circumstances of the case applicant may be released on bail.

**Submission advanced on behalf of the State and informant:-**

16. Per contra, learned AGA as well as learned counsel for the informant vehemently opposed the prayer for bail and submitted that there is specific allegation against the applicant that being MLA, he misused his position and status and after forcibly taking possession over the property of the informant, is continuously threatening him and he on the basis of illegal weapons took forcible possession of 19 vehicles of the informant. They further argued that six vehicles were recovered from the hot mix plant of the applicant on 20.11.2021 and even as per the applicant out of six vehicles, four did not belong to partnership Firm and applicant also did not claim these vehicles and this fact clearly suggest that the recovered vehicles were of informant.

17. They further submitted actually Firm, M/s Krishna Mohan Tiwari is not a partnership Firm but it is the Firm of informant and only to take possession of the Firm, applicant and his family members started claiming that the Firm is a partnership Firm and merely pendency of dispute does not dilute the seriousness of the allegation made against the applicant.

18. Learned AGA further submitted that there is specific allegation against the applicant in the FIR that he not only took possession over the property of the informant but he is also continuously threatening the informant to withdraw the case lodged by the informant against him and thereafter he on the gun point, forcibly took the vehicles of the informant and in spite of these allegations his name is not in the array of the accused then it does not mean, there is no accusation against him in the FIR and therefore, no benefit can be extended to him on the ground that he was not made accused in the FIR.

19. He next submitted that applicant is a hard core criminal and a leader of Inter District Gang bearing registration No. D-12 at police station Gopiganj District Bhadohi and having history sheet No. 2-B P.S. Handia, District Prayagraj. Learned AGA further pointed out that applicant is having criminal history of about 85 cases in different districts and district wise criminal history has been appended alongwith the counter affidavit. He further submitted that after perusal of the criminal history of the applicant, it appears that he is not an ordinary criminal but a hardened criminal who involved in heinous and serious crimes like forceful possession of the Government property, possession of AK-47 and its ammunition, cases under section 307 IPC and U.P.

Gangsters Act and number of times he has been detained under the provisions of National Security Act.

20. Learned AGA further submits that applicant was also made accused in number of cases of 302 IPC although due to his influence, he could not be convicted. He further submits, in number of cases applicant threatened the witnesses of the cases including the victim of case under section 376 D IPC. He further submitted that against the applicant, a case was also registered in the State of West Bengal.

21. Learned AGA further pointed out that recently applicant has also convicted in two cases of Arms Act, therefore, there is every possibility that after release on bail, he will temper the witnesses and such hardened criminal should not be released on bail.

22. He placed reliance on the judgement of the Apex Court passed in the case of ***Neeru Yadav Vs. State of U.P.*** reported in ***[2016 (15) SCC 422]*** and ***Deepak Yadav Vs. State of U.P. and another*** reported in ***[2022(8) SCC 559]***.

**Analysis:-**

23. Applicant is X-MLA and he was four consecutive times MLA from Giyanpur, Bhadoi. Allegation against the applicant is that he misused his position and status and took possession over the properties of the informant and when informant lodged FIR against him then he is continuously threatening him alongwith his other family members and thereafter he forcibly took 19 vehicles of the informant on the point of illegal weapons.

24. As per the prosecution, six vehicles were recovered from the hot mix plant of the applicant. Although as per the applicant, the vehicles in question belonged to the partnership

Firm and with regard to the partnership Firm, a dispute is pending before this Court, in which an Arbitrator has also been appointed but allegation made against the applicant are serious in nature and there is not only allegation of forcible possession of the vehicles of the informant but there are various allegations against the applicant like taking possession over 20 bigha land of the informant and threatening the informant.

25. Applicant is a well known political figure of the State of Uttar Pradesh and he was also X-MLA, therefore, it was his responsibility to maintain law and order but his criminal antecedents of about 85 cases indicates otherwise and from its perusal, it appears that he indulged in every type of crime including murder, rape, attempt to commit murder etc.

26. The Apex Court in the case of ***Prahlad Singh Bhati Vs. NCT, Delhi and another*** reported in ***[(2001) 4 Supreme Court Cases 280]*** highlighted the aspect which should be considered by the Court while dealing with bail applications and observed as follows:-

*“8. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, **the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused,** reasonable possibility of securing the presence of the accused at the trial, **reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State** and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the*



*prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”*

*(emphasis supplied)*

27. Again in case of ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee and another*** reported in ***[(2010) 14 Supreme Court Cases 496]*** also observed as follows:-

*“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused.*

*However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail 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.”***

*(emphasis supplied)*

28. Therefore, from the above decisions of the Apex Court, it appears that although granting or rejecting the bail is discretionary power but discretionary power should be exercised judiciously and while granting bail to an accused

the Court should not only consider the nature of evidence, gravity of allegations and severity of punishment but should also consider the character, behavior, means and standing of the accused and reasonable possibility of securing the presence of the accused at trial, reasonable apprehension of the witnesses being tampered with and the larger interest of the public and the State and further, while granting bail, Court should also consider the danger, of course, of justice being thwarted by grant of bail.

29. Applicant is very influential political figure of the State of Uttar Pradesh and as many as 85 cases were lodged against him and 13 cases are still pending. From perusal of the list of the cases, it reflects that number of cases were of serious and heinous crimes and in two cases he has already convicted, therefore, possibility cannot be ruled out that after release on bail, applicant may tamper the witnesses specially when such allegation against the applicant is itself in the FIR of the present case.

30. Further, every crime committed by an individual is the crime against the society and it always affects the society at large and if such persons who have criminal antecedents of more than 80 cases would be enlarged on bail then they can again commit such offences and they may cause danger to the society and they may also create problems for the State to maintain law and order, therefore, in the interest of the public at large and State, they in general should not be released on bail.

31. Although it appears that applicant is in jail since 14.8.2020 and in the present matter, he is in jail for last about one and a half years but the period of custody of an accused has to be

weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused and the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail **[See: *Ash Mohammad. Vs. Shiv Raj Singh* reported in (2012) 9 SCC 446].**

32. In case of ***Neeru Yadav (supra)*** on which reliance was placed by the learned AGA, Apex Court held that while granting bail to an accused who is having criminal antecedents the Courts should be very cautious and Court cannot ignore the criminal antecedents of the accused. The Apex Court in case of ***Neeru Yadav (supra)*** further observed that law expects the judiciary to be alert while admitting these kind of accused persons to be at large.

33. Therefore, it is lucid that while deciding bail application, criminal antecedents of the accused can not be ignored.

34. Therefore, from the discussion made above, in my view, applicant is not entitled to be released on bail.

35. Accordingly the instant bail application stands ***rejected***.

**Order Date :-23.5.2023**

Ankita