

Reserved

Court No. - 84

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53834 of 2022

Applicant :- Javed Mohammad @ Pump

Opposite Party :- State of U.P.

Counsel for Applicant :- Zaheer Asghar, Syed Ahmed Faizan, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri S.F.A. Naqvi, learned Senior Advocate assisted by Sri Zaheer Asghar, learned counsel for the applicant and Sri Manish Goyal, learned AAG assisted by Sri A.K. Sand and Sri Rajesh Mishra, learned AGAs for the State.
3. This instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0175 of 2022 under Sections 143, 144, 145, 147, 148, 149, 153-A, 153-B, 295A, 307, 332, 336, 353, 435, 427, 504, 505(2), 506, 120-B IPC, 4/5 Explosive Substance Act, 7 C.L.A. Act, 83 Juvenile Justice Act and $\frac{3}{4}$ Public Property Damages Act as well as 3 Explosive Substance Act Police Station Kareli, District- Prayagraj, during pendency of the trial in the court below.
4. According to the FIR, the accused persons pelted stones on the vehicles of police party and set the vehicles on fire and also damaged the public property after Friday prayer. In the FIR 14 persons were named and more than 200 persons were unnamed. Applicant was named along with 14 others. It is further alleged, in the incident some police personnels also sustained injuries and due to the act of accused persons law and order was severely disturbed.
5. Learned counsel for the applicant submits that entire allegations made against the applicant is totally false and baseless and applicant

made accused in the present matter along with 14 named accused persons on the basis of general and omnibus allegation.

6. He further submits, applicant neither participated in the incident nor he was instrumental for such incident. He further submits, even as per the FIR more than 200 persons were participating in the incident but out of them only 14 persons were named including applicant and this fact clearly suggest that who were well known persons of the locality they have been implicated by the police and police nominated them in the FIR including applicant. He further submits, applicant is a social worker and he used to raise voice against atrocity and only due to this reason he was falsely implicated by the police in the present matter.

7. Learned counsel for the applicant further submits, there is no allegation against the applicant that either he was instigating people at spot or he was leading the mob and as admittedly the incident was a result of mob violence, therefore, applicant cannot be held liable for the act of mob.

8. He further submits, although, there is allegation that mob was hurling bomb too and number of police vehicles were also damaged but there is no allegation that applicant was either hurling the bomb or he set the vehicles on fire or on his exhortation or instigation bombs were hurled and vehicles were burnt.

9. He further submits, there is also no allegation either in the FIR or in the statements of prosecution witnesses recorded under Section 161 Cr.P.C. that on the instigation of applicant, property was damaged or vehicles were set on fire. He next submits, although in the FIR it is alleged that number of police personnels were also sustained injuries in the incident but none sustained any serious injury.

10. He next submits that number of similarly placed co-accused persons have already been released on bail in the present matter by co-ordinate benches of this Court including the persons who were also

named in the FIR along with the applicant and case of applicant is at par with those accused who were also named in the FIR. He produced the bunch of the bail orders during the course of argument which is taken on record.

11. Learned counsel for the applicant further submits, Umar Khalid who were named in the FIR at serial no. 14 has been granted anticipatory bail by this Court vide anticipatory bail order dated 28.11.2022 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. no. 7627 of 2022 and similarly another accused Shah Alam was aslo granted anticipatory bail on 28.11.2022 by co-ordinate bench of this Court passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. no. 7782 of 2022. Similarly, named accused Fazal Khan was also released on anticipatory bail by this Court on 21.10.2022 passed in Criminal Misc. Anticipatory Bail Application U/S 438 Cr.P.C. no. 10019 of 2022.

12. He next submits, the named accused Mohd. Shahid was enlarged on bail by this Court on 2.11.2022 passed in Criminal Misc. Bail Application No. 47086 of 2022 and Sahab Urf Mohd. Ahmad was granted bail on 17.10.2022 passed in Criminal Misc. Bail Application No. 39511 of 2022. He further submits apart from the above persons who were named in the FIR there are several other persons who were made accused during investigation and they were also released on bail. He next submits as per allegation made in the FIR and in the statements of witnesses of the present case the case of the applicant is at par with other accused persons who were named in the FIR and have enlarged on bail.

13. Learned counsel for the applicant further submits, applicant was neither arrested at the spot nor any incriminating material was recovered from his possession. He further submits, although, earlier also applicant has falsely implicated in as many as 11 cases but in all the cases he was falsely implicated by the police and in all the cases

applicant has been released on bail and criminal antecedents of the applicant has been properly explained in paragraph no. 40 of the affidavit filed in support of the present bail application. He further submits, out of 11 cases one case is of Electricity Act and two cases relate to violation of Covid-19 guidelines and one case is the present one. He further submits, applicant in all the cases including the present one was implicated only due to reason that he is a whistle blower for his community and always raises voice against atrocities.

14. He further submits number of offences in which applicant is detained are bailable and except Section 307 IPC and 4/5 Explosive Substance Act, in all the offences maximum punishment is upto either three years or seven years and from the perusal of FIR and other material collected by investigating officer during investigation including the statement of prosecution witnesses recorded under Section 161 Cr.P.C. prima facie no offence under Section 307 IPC and offence under Section 4/5 Explosive Substance Act is made out against the applicant and therefore, considering the law laid down by the Apex Court in the case of **Satender Kumar Antil Vs. CBI & others reported in [MANU/SC/0851/2022]**, applicant who is in jail since 10.6.2022 is entitled to be released on bail.

15. Per contra, learned Additional Advocate General vehemently opposed the prayer for bail and submits that in the incident number of police vehicles were damaged and applicant along with other accused persons promoted enmity between different groups on the grounds of religion and race.

16. He further submits, the act of the applicant was prejudicial to national integration and from the FIR itself it appears that applicant along with other accused persons tried to create terror among the common people and law and order was badly disturbed. He further submits in the incident as many as three police personnels were sustained injuries and as they are police personnels, therefore, merely

on the ground that they sustained minor injuries, the act of accused persons including applicant cannot be diluted.

17. Learned AAG further urged although, in the incident as many as more than 200 person participated but as applicant and 13 others were actively participated, therefore, they were identified by the police personnels and applicant was the person who was instrumental for such incident and this fact is evident from the statement of accused persons including the statement of applicant recorded during investigation.

18. He further pointed out that from the statements of co-accused persons recorded during investigation it is evident that applicant was the principal accused and he was instrumental for the alleged incident and on his instigation people gathered and law and order was badly disturbed and public property was damaged and they created havoc in the city and security of entire city came at risk.

19. He further submits, even in the statement recorded under Section 161 Cr.P.C. applicant stated that he is having grudge with the present government and he instructed the people to gather at Atala Crossing on 10.6.2022, the date of incident and this fact clearly suggest that applicant was instrumental for the mob violence occurred on 10.6.2022.

20. Learned AAG produced compilation of case laws which is taken on record and submitted that in the case of **Salim Khan Vs. Sanjay Singh and another (2000) 9 SCC 670** the Apex Court observed that at the time of deciding bail application, all the statements recorded under Section 161 Cr.P.C. should be taken into account and it clearly shows that even the statement of accused person should be considered at the stage of bail.

21. He further submits, in case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another 2004 (7) SCC 528**, the Apex Court held that admissibility of statement recorded under Section 161 Cr.P.C. cannot be adjudicated at the stage of bail and it can only be

determined during trial and in case of Kalyan Chandra Sarkar (supra) the Supreme Court merely on the basis of the statement of the accused set aside the bail granting order passed by the High Court.

22. He further submits, the law is settled that while granting bail the Court should consider the nature of accusation, reasonable apprehension tempering with the witness and impact upon the society of such incident and considering the fact that applicant was having criminal antecedent of as many as 10 cases and the incident was of such nature which greatly impacted the society and applicant was the principal accused who was instrumental of such mob violence, he should not be released on bail.

23. I have heard both the parties and perused the record of the case.

24. The present matter is a case of mob violence in which more than 200 persons participated and the mob damaged the public property and also hurled bombs and number of vehicles were also damaged and they the vehicles were set on fire and in the incident three police personnels also sustained injuries.

25. Applicant was named in the FIR along with 13 others accused persons. From perusal of the FIR and the statements of prosecution witnesses recorded during investigation it appears that general allegation were made against all the accused persons including applicant.

26. It is neither alleged in the FIR nor in the statements of prosecution witnesses recorded during investigation that applicant was either instigating the people or was leading the mob or he was having any weapon in his hand or was hurling bomb or set the vehicles on fire. From the perusal of FIR and statements of witnesses recorded under Section 161 Cr.P.C. it appears that general role has been attributed to all the accused persons including applicant. During investigation when the statement of accused persons were recorded under Section 161Cr.P.C.,

then they stated that applicant was instrumental and on his instigation they joined the mob and when the statement of applicant was recorded then he also stated that he instructed the people to gather after Friday prayer on 10.6.2022 and we will have to show our unity and we must prepare for administrative action.

27. In his statement applicant further stated that he did not instruct the peoples to hurl bombs and pelting stones but when mob gathered then it became uncontrolled and thereafter he himself any how managed to escape from the spot.

28. Although, the statements of the accused persons recorded before police are not admissible but as stated by the Apex Court in case of Kalyan Chandra Sarkar (supra) it can be considered at the time of deciding bail application. From the statements of the accused persons although, it appears that on the instigation of applicant they joined the mob and from the statement of applicant it reflects that he told the people to gather after Friday prayer to show their unity and also told them be prepared for action of administration but from these statements it could not be reflected that applicant either instigated or instructed them to commit violence. Further, neither in the FIR nor in the statement of any prosecution witnesses including the statement of police personnels, it has been alleged that applicant was either leading or he was instigating the people at the spot.

29. Further, if the statement of applicant is taken as whole then it appears that he in his statement stated that he did not tell the people to commit violence and he never told them to either hurl bombs or damage the public properties.

30. Therefore, if we consider the entire evidence available on record including the statements of prosecution witnesses and statements of applicant and other accused persons recorded during investigation then it appears that it is a case of mob violence and at this stage it can not be

said that applicant was instrumental for such violence. It can only be said that he was instrumental for such large gathering of people.

31. Further, applicant has been challaned under Section 143, 144, 145, 147, 148, 149, 153-A, 153-B, 295A, 307, 332, 336, 353, 435, 427, 504, 505(2), 506, 120-B IPC, 4/5 Explosive Substance Act but offences under Sections 143, 144, 145, 147, 148, 336, 435, 427, 504 are bailable and except offences under Section 307 IPC and 5 Explosive Substances Act for all the offences maximum punishment is either of three years or of seven years and as there is no allegation that applicant is either having any bomb or he hurled any bomb or he caused any injury to police personnels, therefore, merely on the basis of existence of Section 307 IPC and 4/5 Explosive Substances Act in the charge-sheet he can not be denied bail.

32. Further, in the FIR total 14 persons were nominated including applicant and number of such accused persons have already been released on bail by co-ordinate bench of this Court and as per allegation made in the FIR and in the statements of prosecution witnesses recorded during investigation the case of applicant is also at par with these accused persons.

33. Although, applicant is having criminal history of 10 other cases but his criminal history has been explained in paragraph no. 40 of the affidavit filed in support of the instant bail application and it appears that one case is of Electricity Act and two cases were of violation of Covid-19 guidelines and in all the other cases applicant is on bail.

34. Bail is a rule and jail is an exception and bail can not be rejected for punitive purposes. Although, it appears that due to the aggression and activeness of the applicant people of his community gathered in large number and thereafter mob committed the violence but considering the fact that applicant does not appear to be instrumental for such violence and he is in jail, in the present matter, since 10.6.2022 and number of

similarly placed accused persons have already been enlarged on bail, and also considering the law laid down by the Apex Court in case of Satyendra Kumar Antil (supra) case, in my view applicant is entitled to be released on bail.

35. In the light of discussions made above, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

36. Let the applicant- **Javed Mohammad @ Pump** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

37. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

Order Date :- 28.1.2023
KK Patel/ AK Pandey