Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18482 of 2024

Applicant :- Etvir Limbu
Opposite Party :- State of U.P.
Counsel for Applicant :- Pradeep Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Shekhar Kumar Yadav,J.

1. On 14.05.2024, this Court passed the following order:

> "Learned counsel or the applicant is permitted to implead Ministry of External Affairs, Union of India, through its Secretary, New Delhi as opposite party no.2 in the array of parties during the course of the day.
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> Put up this case tomorrow i.e. on 15.5.2024 as fresh at 02:00 p.m. before this Court."

2. Again, on 15.05.2024, this Court passed the following order:

> 1- भारत सरकार की ओर से विद्वान अपर महान्यायवादी श्री एस०पी० सिंह एवं सहायक अधिवक्ता श्री पूर्णेन्दु कुमार, एवं विद्वान अपर शासकीय अधिवक्ता उपस्थित हैं।
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> 2- संक्षेप में अभियोजन कथानक इस प्रकार से है कि अभियुक्त के ऊपर आरोप है कि वह दिनाँक 23.02.2024 को सुबह 4.30 बजे अंधेरे में वायु कमान मनौरी लोहे की बनी ग्रिल के जरिए घुसते हुए पकड़ा गया है और अभियुक्त का उक्त कृत्य गम्भीर एवं देशविद्रोही और देश की गोपनीयता एवं आन्तरिक सुरक्षा का खतरा उत्पन्न करने वाला है। अभियुक्त नेपाल का निवासी है।
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> 3- दौरान बहस भारत सरकार की ओर से विद्वान अपर महान्यायवादी श्री एस०पी० सिंह से जब यह पूछा गया कि प्रश्नगत घटनास्थल मनौरी जोकि शहर के बीचोंबीच स्थित है, जहाँ पर बच्चों के स्कूल भी स्थित हैं, ऐसी स्थिति में वायुसेना की दीवार जोकि मेनरोड से लगकर बनी हुई है उसमें दूर-दूर तक दीवारों पर इस प्रकार का कथन बड़े-बड़े अक्षरों में छपा है कि घुसपैठियों को देखते ही गोली मार दी जाएगी। इस प्रकार की लिखावट बच्चों एवं राहगीरों के मन-मस्तिष्क पर बुरा असर डालती है और इस लिखित कथन को दूसरी तरह से भी लिखा जा सकता है जैसेकि सख्त कार्वाही की जाएगी।
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> 4- उक्त के उत्तर में श्री एस०पी० सिंह ने न्यायालय को बताया कि इस प्रकार की लिखावट देश के सभी थल सेना/वायु सेना की बाहरी दीवारों पर लिखा रहता है किन्तु वह यह बताने में असमर्थ रहे कि ऐसे कौन-से दिशा-निर्देश, नियमावाली एवं पॉलिसी है जिसके तहत उक्त कथन दीवारों पर लिखा गया है। उनके द्वारा दो सप्ताह का समय इस आशय से माँगा गया है कि वह अगली नियत तिथि पर न्यायालय द्वारा पूछे गये प्रश्न के उत्तर में थलसेना एवं वायुसेना का दिशा-निर्देश, नियमावली एवं पॉलिसी न्यायालय के समक्ष प्रस्तुत करेंगे।
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> 5- अतः इस वाद को दिनांक 23.05.2024 को नवीनवाद के रूप में उनके समक्ष सूचीबद्ध किया जाए।
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> 6- अग्रिम नियत तिथि को विद्वान अपर महान्यायवादी श्री एस०पी० सिंह इस सम्बन्ध में नियमावली,

दिशा-निर्देश एवं पॉलिसी दाखिल करेंगे एवं अन्यथा की स्थिति में विपक्षी/सूचनाकर्ता स्कोर्डन लीडर पी०एम०पाटिल स्टेशन सिक्योरिटी ऑफिसर इस न्यायालय के समक्ष व्यक्तिगत रूप से उपस्थित होंगे।

7- जहाँ तक आवेदक/अभियुक्त के नेपाल के नागरिक होने का सम्बन्ध है उस सम्बन्ध में उसके द्वारा नेपाल का पहचान-पत्र संलग्नक 3 के रूप में संलग्न किया गया है, जोकि नेपाल सरकार द्वारा जारी किया गया है, इस सन्दर्भ में सम्बन्धित विवेचक इसका सत्यापन करे कि वह नेपाल सरकार द्वारा जारी किया गया है अथवा नहीं।

3. In pursuance of the above orders, Mr. Purnendu Kumar Singh, learned AGA has filed an affidavit of compliance has been filed on behalf of Angshuk Pal,Air Commodore, Air Officer Commanding 24 ED, Air Force, which is taken on record.

4. In paragraph 4 of the said affidavit of compliance, it is stated that various compressive security measures are being taken up by the defence forces to protect the defence stations/installation effectively from any intrusion, trespassing and unauthorized access like perimeter security, manning of security personal at entrance and exit, fencing of defence land and installation of cautionary board as such "Prohibited Area, Trespasser will be shot". It is further stated that security of defence station/installation is being done to protect the interest of the nation and all measures are adopted/fostered in that essence only.

5. In paragraph 6 of the said affidavit of compliance, it is further stated that Air Force Order (in short as "AFO") No.23/2013 was issued by the Chief of Air Staff n 2013, Indian Air Force vis-a-vis the physical security of the defence installations/stations, wherein in paragraph 5 of the aforesaid AFO, inter-alia, provides that large notice boards are to be prominently displayed around the perimeter, particularly, at all entrances and exits, prominent corners and track locations, declaring the camp "Prohibited Area, Trespasser will be prosecuted". It is further stated that board should be written in English, Hindi and vernacular language. Similarly, "photography prohibited" boards are also to be displayed at prominent places in and around the unit perimeter.

6. Also, in paragraph 7 of the said affidavit of compliance, it is further stated that despite having reasonable security arrangement at defence stations/installation, the case of instructions and trespassing were on rise. Post Terro strike at Pathankot Air Base and Uri Army Base, a number of numerous measures have been initiated to enhance physical security of defence installation/station. Subsequently, a directive dated 04 December, 2018 was issued on Base Security by Senior Air and Administrative Staff Officer (in short as Maintenance Command 'SAASO') of Headquarters (in short as "HQ MC" Paragraph 25 of aforesaid directive therein provides as follows:

25. Firing Orders. Firing orders issued-to the QRT and guards are to incorporate the following:-

(a) Shoot to kill

(i) if the Guard deployed at perimeter hears any shots being fired outside the perimeter wall, or launch of heavier caliber, munitions like grenade/mortar from outside, he is to closely monitor the area and from his protected position he is to fire at the hostile element, if he approaches the perimeter.

(ii) if guard deployed at perimeter observes any one jumping the perimeter wall to gain entry and the intruder is armed, the Guard will shoot to kill.

(iii) If an attack with weapons/vehicle is made on the gates of the Station, guard will shoot to kill.

(iv) If an armed intruder is positively identified inside the Base, guard will shoot to kill.

(v) Shoot to kill drill involves putting in at least three bullets at the centre of the body of the hostile element, followed by a shot to the head.

Note: Display in sign boards "Trespassers will be shot" (Bilingual preferably in local language is to be places at prominent places.

(B) On Non-compliance with challenging Procedure-

(i) When an intruder is unarmed or positive identification is not possible firing will be resorted to after following the laid down challenging procedure.

(ii) Before opening fire, the guard will challenge the intruder or any person approaching. While doing this, the guard is not to expose himself to the intruder. He is to protect himself by using any natural cover available in the vicinity like tree trunk, building corner, earth mound, pillars etc. When in buddy pair, the second guard is to provide covering fire to the guard not comply with the order of the guard to halt and prove his identity, in spite of his warning in English and Hindi, i.e. **STOP OR I WILL SHOOT**" and **THAM NAHIN TO GOLI MAR DOONGE**" if the intruder continues to advance, the guard will fire at the intruder below the waist level with the aim to immobilize him.

(C) General Guidelines

(1) Whenever the intruder is armed, the guard should always shoot to kill. Any other approach would expose himself to retaliatory fire from the intruder, who may be equipped with weapons having lethal firepower.

(ii) When the intruder is unarmed, opening of fire must be resorted to as the last resort. Whenever required to open fire, the aim should be to immobilize the intruder and thereafter overpower him.

(iii) Firing by the guards at unarmed intruder should be resorted to only when it becomes inescapable for their own protection or for the person of property being guarded.

(iv) In case an unarmed intruder is shot at, with the aim of immobilizing him the guards should not approach the intruder directly, but await arrival of specialist bomb detection teams to confirm that the intruder does not have any explosives strapped

onto his body. Safe distance is to be maintained from the injured intruder till all clear is given by the specialist team.

7. As per aforesaid guidelines of the above affidavit of compliance, it is true that trespassers are not allowed to enter into premises of armed forces for the purpose of security, but the language mentioned as "***dekhte hi goli maar di jayegi"***, in my opinion, is not proper, particularly, where the installation of armed forces situated in public place where general public, specially, children keeps coming and going. These type of words have a bad impact on the children so the Central Government may take caution in writing theses types of words. There should be light words used in place of ***"Trespassers will be shot"*** and ***"dekhte hi goli maar di jayegi'.***

8. Heard Mr. Pradeep Kumar, learned counsel for the applicant, learned AGA for the State, Mr. Purnendu Kumar Singh, learned AGA alongwith Mr. S.P. Singh, learned Additional Solicitor General of India and perused the material available on record.

9. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant seeking enlargement on bail in Case Crime No.36 of 2024, under Sections 3 and 7 of Official Secrets Act, 1923 and Section 461 IPC, Police Station Puramufti, District Nagar (Commissionerate Prayagraj).

10. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. The applicant is the citizen of Nepal having proper citizenship of Nepal and the permanent address of applicant is Pachrukhi, District Itahri, Nepal, copy of nationality certificate of applicant duly issued by Government of Nepal showing the address of applicant, is annexed as Annexure No.3 to the affidavit. The applicant belongs to very poor family and is illiterate person having no educational certificate. The applicant came to India for the purpose of job upon calling his neighbor Suraj Manjhi, who is residing and working in India for the last several years. On the fateful day, the applicant was stayed near Naini Station and unintentionally and without any malice, reached Manauri Air Force Station, Prayagraj and since the applicant was in intoxicated condition, he entered into the Air Force Station where many things were happened but the applicant, who was having no knowledge of Hindi, could not explain properly to the posted soldier and also could not show his identity card, which was lost somewhere during drunken condition. He further submits that there was no ill intention of the applicant to enter into the premises of Manauri Air Force Station. Nothing incriminating article has been recovered from the possession of the applicant but the investigating officer without considering all theses aspects have submitted charge sheet against the applicant in a routine manner. The applicant is having no previous criminal history as has been mentioned in paragraph 20 of the affidavit. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been

assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required. The applicant is in jail since 24.02.2024.

11. On the other hand, learned A.G.A. opposes the application for bail and has submitted that the applicant is having citizenship of Nepal. In this regard, a citizenship certificate of the applicant has been obtained from the Nepal Government, copy of certified copy of citizenship of applicant has been annexed as Annexure No.2 to the affidavit filed on behalf of State.

12. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, particularly seeing the fact that applicant being illiterate and belongs to Nepal having proper citizenship, this Court is of the view that the applicant may be enlarged on bail.

13. Let the applicant-**Etvir Limbu**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) 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.

(ii) The applicant shall remain present before the Trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC.

(iii) 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 IPC.

(iv) 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.

(v) The Trial Court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

16. Let copy of this order be provided to Mr S.P. Singh, Additional Solicitor General of India for compliance of this order as mentioned above.

Order Date :- 31.5.2024

Ajeet