VERDICTUM.IN

Neutral Citation No. - 2023:AHC-LKO:76225

AFR

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3121 of 2023
Applicant :- Abbas Ansari
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
Counsel for Applicant :- Pranjal Krishna,Arun Sinha,Siddhartha Sinha
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Priyadarhi Manish Advocate, the learned counsel for the applicant, Sri Anurag Verma, the learned Additional Government Advocate-I for the State and perused the record.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 431 of 2019, under Sections 420, 467, 468, 471 I.P.C. and Section 30 of Arms Act, registered at Police Station Mahanagar, District Lucknow.
3. The aforesaid case has been registered on the basis of an F.I.R. lodged by the Inspector In-charge, Police Station Mahanagar on 12.10.2019, alleging that the applicant was issued a DBBL Gun License No. 1628/ P.S. Mahanagar/Lucknow by the District Magistrate, Lucknow in the year 2012. The applicant had applied to the Joint Commissioner of Police, Licensing, New Delhi for registration of his license at his Delhi address, i.e., 111/A/9, Ganpati Niwas, Kishangarh, Vasant Kunj, New Delhi and he was issued License No. SDVS/2/2015/1 and UID No. 10675002 1283342015. The applicant purchased numerous fire arms on the aforesaid license claiming himself to be a renowned shooter. He projected that he had got the license issued at Lucknow transferred to Delhi but no intimation in this regard had been given to the concerned police station and the applicant continued to use both the licenses issued in two different states on two different UID's.
4. In the affidavit filed in support of the bail application, it has been stated that the applicant is innocent and he has been falsely implicated in the present case. In para 29 of the affidavit filed in support of the

VERDICTUM.IN

bail application, it has been stated that the applicant has a criminal history of eight cases but particulars of those cases has not been disclosed by the applicant in the affidavit.

5. The State has filed a counter affidavit opposing bail application and the following criminal history of the applicant has been disclosed in the counter affidavit: -

Sl.No.	Case Crime No.	Section	P.S.	District
1	689 / 20	120 B, 420, 323, 356, 467, 468, 471, 474, 477 A IPC	Kotwali, Ghazipur	Ghazipur
2	236 / 20	120 B, 420, 467, 468, 471 IPC and Prevention of Damage To Public Property Act	Hazaratganj	Lucknow
3	431 / 19	419, 420, 467, 468, 471 IPC and Section 30 Arms Act	Mahanagar	Lucknow
4	27 / 22	188, 171 H IPC and Section 133 of Representation of People Act	T. Tola	Mau
5	95 / 22	188, 171 F IPC	Kotwali	Mau
6	97 / 22	171 H, 506, 186, 189, 153 A, 120 B, IPC	Kotwali	Mau
7	106 / 22	171 H, 188, 341 IPC	Kotwali	Mau
8	312 / 22	174 A IPC	Kotwali Mahanagar	Lucknow
9	0088 / 23	387, 222, 186, 506, 201, 120 B, 195 A, 34 IPC & 34, 7, 8, 13 P.C. Act	Kotwali Nagar Karvi	Chitrakut

6. A rejoinder affidavit has been filed on behalf of the applicant in reply to the counter affidavit filed by the State.

7. The applicant had filed a Criminal Misc. Writ Petition No. 28833 of 2019 and by means of an interim order dated 19.10.2019 a Division Bench had stayed arrest of the applicant. However, the aforesaid writ petition has been dismissed as infructuous by means of an order dated 24.01.2022, after a charge-sheet was submitted and the trial court has taken cognizance of the case on 24.12.2020. Thereafter, the petitioner

VERDICTUM.IN

filed an Application u/s 482 Cr.P.C No. 1905 of 2022 challenging validity of the charge-sheet. The aforesaid application is pending consideration of this court and no interim relief has been granted to the applicant in that case.

8. The learned counsel for the applicant has submitted that initially the applicant was granted an Arms license by the District Magistrate, Lucknow but thereafter the applicant had shifted his residence from Lucknow to Delhi and, therefore, he had applied to the Joint Commissioner of Police, Licensing Unit, New Delhi, for registration of the outside license granted at Lucknow. The Joint Commissioner of Police, Licensing, New Delhi had sent a letter dated 10.05.2015 to the District Magistrate, Lucknow asking for the following information:-

> *"1. What was the area validity at the time of last renewal.*
> *2. Whether one state, more than one states (specify the states) or All India (copy of Area Validity extension order may also be enclosed).*
> *3. Date of the sanction of the licence.*
> *4. Details of the weapon entitled according to the arms license.*
> *5. Quota cartridges entitlement.*
> *6. Last renewal and its validity.*
> *7. A copy of local police verification conducted at the time of issues of Arms Licence & copy of residence proof submitted by above license, may also be provided to this office. This may kindly be treated as URGENT."*

9. The District Magistrate Lucknow had sent a reply on 04.08.2015 stating that the applicant had been granted License No. 1268/P.S Mahanagar/ Lucknow in respect of a DBBL Gun No. DTO3287W by means of an order dated 21.09.2012. The aforesaid license was renewed till 24.09.2015 and it was valid in the entire state of Uttar Pradesh. The license authorized the applicant to purchase upto 10 cartridges at one instance and a maximum of 100 cartridges per year. The office of the District Magistrate conveyed that it had no objection in case the license granted to the applicant was registered and renewed by the office of the Joint Commissioner of Police.

10. Thereafter, the Joint Commissioner of Police, Licensing, New Delhi had issued a license to the applicant on 01.06.2017 and the applicant purchased as many as seven arms on the strength of the aforesaid

VERDICTUM.IN

license, which are mentioned on the license. The license mentions the areas of its validity to be all India being a renowned shooter and it was valid till 24.09.2018. The cartridges purchased on the strength of the arms license have also been mentioned on the license, which indicates that the applicant had made several purchases of cartridges of a gun, rifle and pistol of different bores at several instances. He had often purchased 200 cartridges at once on several instances and at one instance he had purchased 1000 cartridges of 1.22 bore. Numerous other instances of purchase of cartridges have been endorsed on the license issued to the applicant.

11. The learned counsel for the applicant has submitted that a 'Renowned Shooter' is defined in the Explanation (c) appended to Rule 40 of the Arms Rules 2016. A notification dated 04.08.2014 issued by the Ministry of Home Affairs, Government of India provides that a Renowned shooter may possess the following categories of firearms: -

> *"i) Rifles in caliber .22 Long (1) The total number of weapon Rife (also known as .22 L.R);*
>
> *(ii) Center fire Rifles with calibers up to 8 mm including all calibers lower than 8mm;*
>
> *(iii) Pistol/ Revolvers of caliber up to and including 9 mm (2) The person must hold a certificate but excluding o mm parabellum (9x19mm)*
>
> *(iv) Short guns of caliber up to 12 bore/gauge including all calibers lower than 12 bore/gauge."*

12. The conditions mentioned in the Schedule appended to the aforesaid Notification states that total number of weapons exempted shall not exceeds 7 in addition to the number of weapons he is entitled to possess as a normal citizen as per the provisions of the Act, subject to an overall ceiling of 10 weapons.

13. The learned counsel for the applicant has submitted that as the applicant is a renowned shooter, he was entitled to hold 10 firearms and the applicant was having merely 7 firearms, which was permissible in law.

14. The learned counsel for the applicant has next submitted that the police claimed that the applicant had acquired firearms in excess of

VERDICTUM.IN

the number, for which he had been licensed and the firearms had been recovered from the applicant's residence at New Delhi. The offence, if any, has been committed by the applicant at New Delhi, and, therefore, U.P. Police had no authority to lodge a First Information Report in police Station Mahanagar, as no offence has been committed by the applicant within the territorial limits of the aforesaid Police Station or even in the territory of the State of Uttar Pradesh.

15. In the order dated 19.10.2019 passed by a Division Bench of this court in Writ Petition No. 28833 (M/B) of 2019, this Court had directed that while filing a counter affidavit, the State should address the point that after a license had been issued by the Delhi Police whether the District Magistrate, Lucknow remained the licensing authority after having given a No Objection letter.

16. The learned counsel for the applicant has further submitted that the allegation that the applicant had got two licenses issued on a single Unique Identification Number, is false as the license issued to the applicant by the District Magistrate, Lucknow did not bear any Unique Identity Number and that is the reason why no such number is mentioned in any of the communication issued by the office of District Magistrate or by the Police. He has submitted that the Unique Identification Number was introduced in Rule 15 of the Arms Rules, 2016 and prior to that, there was no such prescription for issuance of Unique Identification Number and, therefore, the applicant has been issued a Unique Identification Number after he was granted a license by the Delhi Police and prior to that he was not allotted any Unique identification Number.

17. The applicant was languishing in jail in connection with a case lodged by the Directorate of Enforcement, since 04.11.2022 and the applicant is in jail in connection with the present case since 24.12.2022.

18. At the closure of his submissions, Sri. Priyadarshi Manish, the learned counsel for the applicant supplied a compilation of photocopies of 13 judgments running into 242 pages, which has no index attached. The judgments are **Satender Kumar Antil versus CBI**, (2022) 10 SCC 51, **Siddharth versus State of U.P. and another**, (2022) 1 SCC 676,

VERDICTUM.IN

Dr. Shivinder Mohan Singh versus Directorate of Enforcement, 2020 SCC OnLine Del 766, **Moti Ram versus State of M.P.**, (1978) 4 SCC 47, **Babu Singh versus State of U.P.**, (1978) 1 SCC 579, **Ash Mohammad versus Shiv Raj Singh alias Lalla Babu and another**, (2012) 9 SCC 446, **Chaman Lal versus State of U.P. and another**, (2004) 7 SCC 525, **Masroor versus State of U.P. and another**, (2009) 14 SCC 286, **P. Chidambaram versus CBI**, (2020) 13 SCC 337, **P. Chidambaram versus Directorate of Enforcement**, (2020) 13 SCC 791, **Prasanta Kumar Sarkar versus Ashis Chatterjee and another**, (2010) 14 SCC 496, **Ram Govind Upadhyay versus Sudarshan Singh and another**, (2002) 3 SCC 598 and **Sanjay Chandra versus CBI**, (2012) 1 SCC 40. However, he placed before the Court only one judgment in the case of **Dr. Shivinder Mohan Singh versus Directorate of Enforcement**, 2020 SCC OnLine Del 766 and left the other judgments to be read by the Court itself.

19. Replying to the aforesaid submissions, Sri Anurag Verma, learned A.G.A.-I has submitted that the applicant was initially granted an Arms License by the District Magistrate, Lucknow, which license authorized him to purchase a single DBBL gun and it did not authorize him to have multiple firearms. He has submitted that the provisions for issuance of Unique Identification Number had been introduced in Arms Rules, 1962 by an amendment made in the year 2012 and this provision was there when the applicant was granted a licence by the District Magistrate Lucknow and when the applicant had obtained a No objection certificate.

20. Sri Verma has submitted that the license issued to the applicant by the Delhi Police has already been cancelled by means of an order dated 26.08.2021 passed by Joint Commissioner of Police, Licensing Unit, Delhi, after issuing a show cause notice to the applicant, providing him an opportunity of personal hearing and taking into consideration his submissions. The aforesaid order records following reasons for cancellation of his arm's license:-

> *"(1) The FIR No. 431/19 U/s 420/467/468/471 IPC & 30 Arms Act, PS Mahanagar, Lucknow, UP is still pending trial in the*

VERDICTUM.IN

Hon'ble Court which has not been quashed by the Hon'ble High Court so far. Therefore, any contention regarding it being irrelevant or extra jurisdictional or frivolous cannot be considered at this stage.

2. Perusal of record revealed that the licensee applied to this Licensing Authority on 14.10.2015 seeking addition of an NPB Rifle on the grounds of being "Renowned Shot and for which recommendation of NRAI and copy of import permit no. NRAI/IMPP/861/1785/2015 dated 02.09.2015 was issued by the NRAI. The then Licensing Authority accordingly allowed addition of 01 Rifle with spare Barrel on the basis of these documents. However, licensee preferred not to avail import permit and rather availed the provisions of notification no. 147/94-Customs for bringing 06 spare Barrels in personal baggage.

Further, perusal of the import permit revealed that a clear description of Bore, Barrel, number of Rifles as 'one' and number of spare barrels as 'one' permitted to be imported was mentioned in the import permit. Had the licensee used the said import permit he would have not been allowed to import weapons or barrels of other description and excess in quantity which he actually did. He rather exploited the conditions of the Ministry of Home Affairs Notification No. S.O 665(E), dated 04.08.2014 which clarifies that "for exemptees at SI No. 1 and Sl. No. 2 of the schedule, a weapon with spare or conversion Barrels is to be treated as one weapon only at the time of endorsement of the license and full details of the said weapon and such spare and conversion weapon shall be endorsed on the respective license". The act of the licensee is suggestive of his intention to bring the Barrels of different Bores from overseas for some other purposes and reasons best known to him, other than sports as Barrels of caliber (1) .375 (9.52 mm) Bore No. R/ 101633 and (2) .458 (11.63 mm) Bore No. R/109355 are not permissible to shooters as per the then existing Ministry of Home Affairs Notification No. S.O. 1988 (E), dated 04/08/2014.

Perusal of record also revealed that on 06.04.2016, the licensee had applied for conversion of his NPB Gun to NPB Revolver/Pistol citing reason of being a renowned shot who wanted to participate in 'small bore' weapon events. His request was acceded to. He imported one .357 (9.067 mm) Bore Pistol No. BBGV-728 alongwith 03 spare Barrels and out of which .40 (10.16 mm) Bore No. BBCD-839 was not permissible to sports person as per the then existing Ministry of Home Affairs Notification No. S.O 1988 (E), dated 04.08.2014 which again

casts aspersions on the intention of the licensee to use said weapon for some other purpose and reasons best known to him."

21. The order further records that jacketed cartridges have been recovered from the applicant's possession regarding which he claimed that those were used by him for target practice. National Rifle Association of India (NRAI) has categorically prohibited such ammunition to be used in range for shooting practice. ISSF also does not allow such ammunition to be used during events. Jacketed cartridges are dangerous for human beings and, therefore, not allowed in shooting ranges. Recovery of such cartridges from the possession of licensee further strengthens the inference that the licensee imported Jacketed cartridges for some other purposes best known to him, though certainly not for *bona fide* purpose.

22. In view of the aforesaid reasons, the Joint Commissioner of Police came to a conclusion that the applicant is not suitable to hold an Arms License as he deliberately imported firearms/spare barrels and ammunition for which he was not authorized. He has misused the status and privileges of a renowned shooter. His clandestine objective has been to acquire foreign origin arms through the privileges extended to a renowned shooter for reasons best known to him. The applicant could not provide satisfactory and logical reasons for the violations during oral hearing.

23. In response to a letter issued to National Rifle Association of India (NRAI), its Secretary has informed through a letter dated 21.12.2019 that the applicant has imported the following four weapons: -

"1. 12 Bore SBBL Gun No. TA-013638 Import from Policane. Slovenija .

2. 0.357 Bore Pistol No. BBGV-728 Import form Policane. Slovenija.

3. 0.30-06 Bore Rifle No. R/105923 with 06 Barrels (1) Cal. .223 Sl. No. R/111317 (2)Cal. .308 Sl. No. R/111048 (3) Cal. .30-06 Sl. No. R/101847 (4) Cal. 300 Sl. No. R/105251 (5) Cal. .375 Sl. No. R/101633 (6) Cal. .458 Sl. No. R/10355 Imported from Policane, Slovenija J

4. 12 Bore DBBL Sl. No. 03297W Beretta Import from Cyprus."

VERDICTUM.IN

24. Item Nos. 2 & 3, i.e. a 0.357 bore pistol and rifle with six barrels of different calibers, had been imported without any import permit.

25. A copy of an affidavit dated 15.11.2019 submitted by the applicant before the Licensing Authority at New Delhi has been annexed with the counter affidavit, which mentions his permanent residential address as "111 A/9 Ganpati Niwas Kishangarh, V Kunj, ND" whereas the applicant was never a permanent resident of that place. He has mentioned the name of his nominee as Mukhtar Ansari, who is the applicant's father whereas the applicant's father is already undergoing incarceration for the past more than a decade.

26. The learned A.G.A.-I has submitted that aforesaid address mentioned by the applicant as his permanent resident, is absolutely false as during investigation statement of the owner of the premises has been recorded, who said that the applicant has taken a one bedroom accommodation in her house on rent and he used to visit the premises once in every 2 or 3 months.

27. The learned A.G.A-I has further submitted that the applicant had filed an application for grant of anticipatory bail, which was rejected by means of an order dated 26.08.2022 passed by this Court in Criminal Misc. Anticipatory Bail No. 1396 of 2022. The applicant had challenged the aforesaid order dated 26.08.2022 by filing Special Leave Petition (Crl.) No. 9315 of 2022, which was dismissed by means of an order dated 09.01.2023 passed by the Hon'ble Supreme Court with the observation that the observations made while rejecting the anticipatory bail application would not come in the way of consideration of his regular bail application.

28. The learned A.G.A.-I has relied upon the judgment of the Hon'ble Supreme Court in the case of **Harjeet Singh Vs. Indrapeet Singh and others**: AIR 2021 SC 4017, wherein the Hon'ble Supreme Court has set aside a bail order passed by the High Court for the reason that *the High Court had failed to appreciate and consider the nature of the accusation and the severity of the punishment in case of conviction and the nature of supporting evidence. The High Court had also failed to*

VERDICTUM.IN

appreciate the facts of the case; the nature of allegations; gravity of offence and the role attributed to the Accused.

29. Keeping in view the conduct of the learned Counsel for the applicant in supplying a compilation of 13 judgments running into 242 pages, without even an index, and placing only one judgment of the Delhi High Court and leaving it for the Court to go through the remaining 12 judgments, the Court is constrained to observe that an increasing tendency of supplying multiple case-laws, without connecting the same to the facts and circumstances of the case in hand is being observed nowadays. This results in wastage of precious time of the Court and creates an unnecessary obstacle in expeditious dispensation of justice.

30. It would be proper and sufficient if the learned Counsel put up a proposition and then submit a case-law in support thereof. In case any proposition is supported by any land-mark judgment which has been followed consistently and repeatedly, it would be sufficient to cite that land-mark judgment, or at the most one more latest judgment in which it was followed or reiterated. The Counsel should not supply case laws without putting up a proposition and they should avoid the temptation of citing multiple case-laws on a single point, which does not make any beneficial difference. The learned Counsel are expected to assist the Court in arriving at a decision expeditiously without wasting the precious time of the Court so that the same time may be better utilized in the interest of some other litigants.

31. However, since photocopies of 13 judgments have been supplied by the learned Counsel for the applicant, I proceed to deal with all those judgments.

32. In **Ram Govind Upadhyay v. Sudarshan Singh**, (2002) 3 SCC 598, the first bail application of the accused had been rejected by the High Court but his second application was allowed for the sole reason that the accused had spent more than 1 year in jail. While setting aside the bail order, the Hon'ble Supreme Court held that: -

> *"The High Court thought it fit not to record any reason, far less any cogent reason, as to why there should be a departure when*

VERDICTUM.IN

> *in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail, more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment — it is a heinous crime against the society and as such the court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of a very serious nature."*

33. In **Ram Govind Upadhyay**, the Hon'ble Supreme Court reiterated the principles regarding grant of bail in the following words: -

> ***"3.*** *Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*
>
> ***4.*** *Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:*
>
> *(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*
> *(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*
> *(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*
> (d) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the*

VERDICTUM.IN

> *normal course of events, the accused is entitled to an order of bail."*

34. In **Chaman Lal v. State of U.P.**, (2004) 7 SCC 525, **Masroor v. State of U.P.**, (2009) 14 SCC 286, **Prasanta Kumar Sarkar v. Ashis Chatterjee**, (2010) 14 SCC 496, **Ash Mohammad v. Shiv Raj Singh**, (2012) 9 SCC 446, copies whereof have also been supplied by the learned Counsel for the applicant, the Hon'ble Supreme Court had set aside the bail orders passed by the High Courts, following the aforesaid principles laid down in **Ram Govind Upadhyay** (Supra). These cases do not at all support the applicant's claim for being released on bail and I cannot appreciate the aforesaid judgments being included in the compilation handed over by the learned Counsel for the applicant.

35. In **Moti Ram v. State of M.P.**, (1978) 4 SCC 47, the appellant, who was a mason, had filed a Criminal Appeal, which was pending before the Hon'ble Supreme Court and the Hon'ble Supreme Court had passed an order for bail in his favour "to the satisfaction of the Chief Judicial Magistrate". The Magistrate ordered that a surety in a sum of Rs 10,000/- be produced. Further, the Magistrate refused to accept the suretyship of the petitioner's brother because he and his assets were in another district. The Hon'ble Supreme Court mandated the Magistrate to release the applicant on his furnishing a personal bond of Rs.1,000/- and observed that: -

> ***"2.*** *If mason and millionaire were treated alike, egregious inegality is an inevitability. Likewise, geographic allergy at the judicial level makes mockery of equal protection of the laws within the territory of India. India is one and not a conglomeration of districts, untouchably apart."*

The aforesaid judgment has no relevance for deciding the applicant's bail application.

36. In **Siddharth versus State of U.P. and another**, (2022) 1 SCC 676, the Hon'ble Supreme Court held that: -

> ***"9.*** *... It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have*

VERDICTUM.IN

> *been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.*
>
> ***10.** We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172]. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.*
>
> ***11.** We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a prerequisite formality to take the charge-sheet on record in view of the provisions of Section 170 CrPC. We consider such a course misplaced and contrary to the very intent of Section 170 CrPC."*

37. The aforesaid principle of law has no application to the facts of the present case.

38. In **Babu Singh v. State of U.P.**, (1978) 1 SCC 579, the Hon'ble Supreme Court was dealing with an objection that second bail application would not be maintainable, and held that an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. The Hon'ble Supreme Court reiterated the following principles regarding grant of bail: -

> ***"16.** Thus the legal principle and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process*

VERDICTUM.IN

of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record—particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

* * *

19. *A few other weighty factors deserve reference. All deprivation of liberty is validated by social defense and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned "free enterprise", should be provided against. No seeker of justice shall play confidence tricks on the Court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.*

20. *Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding — if that be so — of innocence has been recorded by one Court. It may be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, it enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and police prediction of criminal prospects to invalidate the bail plea are admissible in*

VERDICTUM.IN

principle but shall not stampede the Court into a complacent refusal."

39. **Dr. Shivinder Mohan Singh versus Directorate of Enforcement**, 2020 SCC OnLine Del 766 is the only judgment that was placed before the Court by the learned Counsel for the applicant, in which it was held that: -

> ***"24.*** *Nowhere is it the law that an accused, yet to be tried, is to be kept in custody only on a hunch or a presumption that he will prejudice or impede trial; or to send any message to the society. If anything, the only message that goes-out to the society by keeping an accused in prison before finding him guilty, is that our system works only on impressions and conjectures and can keep an accused in custody even on presumption of guilt. While in certain cases such message may even quench the thirst for revenge of the lay society against a person they believe to be guilty, such action would certainly not leave our criminal justice system awash in glory. An investigating agency must come to court with the confidence that they have arrested an accused, based on credible material, and have filed a complaint or a charge-sheet with the certainty that they will be able to bring home guilt, by satisfying a court beyond reasonable doubt. But when an investigating agency suggests that an accused be detained in custody as an undertrial for a prolonged period, even after the complaint or charge-sheet has been filed, it appears that the investigating agency is not convinced of its case and so it fears that the accused may 'get-off' by discharge or acquittal; and that therefore the only way to 'punish the accused' is to let him remain in custody as an undertrial.*
>
> ***25.*** *After all, the Supreme Court has said that it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson (cf. Sanjay Chandra v. CBI, supra). How does one carry forward the Supreme Court precept that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty, if we deny bail without cogent reason (cf. Sanjay Chandra v. CBI, supra).*
>
> ***26.*** *People's trust in the criminal justice system must rest on surer footing than on pre-trial punishment by keeping accused persons in prison. Statistics available on the Delhi Prisons website as on 31.12.2019 show that the proportion of undertrials to convicts in Delhi prisons is about 82 percent to 18 per cent. These numbers are telling. Prison is a place for punishment; and no punishment can be legitimate without a trial. There must be*

VERDICTUM.IN

> *compelling basis, grounds and reasons to detain an undertrial in judicial custody, which this court does not discern in the present case."*

40. The aforesaid judgment has been rendered by an Hon'ble Single Judge of another High Court and it has no binding precedential value, and there was no occasion to place this judgment when there are numerous judgments of the Hon'ble Supreme Court on the points in issue.

41. In **Sanjay Chandra v. CBI**, (2012) 1 SCC 40, the appellant's request for grant of bail had been rejected by the Session Court and the High Court on two grounds – (1) the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer and (2) the possibility of the accused persons tampering with the witnesses. The Hon'ble Supreme Court allowed the appeal after taking into consideration that the charge was that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

42. In **Sanjay Chandra** (Supra) the Hon'ble Supreme Court reiterated the well established general principles that: -

> ***"21.*** *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*

VERDICTUM.IN

> ***22.*** *From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*
>
> ***23.*** *Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*

43. However, in **Sanjay Chandra** (Supra) the Hon'ble Supreme Court further held that *"**The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case**."*

44. In **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, the Hon'ble Supreme Court reiterated the following principles regarding to be kept into consideration while deciding an application for release of an accused person on bail: -

> ***"4.*** *To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re.*
>
> ***5.*** *The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re that bail is not to be withheld as a*

VERDICTUM.IN

> *punishment. Reference was also made to Emperor v. H.L. Hutchinson wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days."*

45. Immediately after stating the aforesaid principles, the Hon'ble Supreme Court cautioned in **Dataram Singh** (Supra) that: -

> ***"6. However, we should not be understood to mean that bail should be granted in every case. 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 and compassionately**."*

46. In **P. Chidambaram v. CBI**, (2020) 13 SCC 337, the Hon'ble Supreme Court had reiterated the well settled principles regarding grant of bail that: -

> *"21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:*
>
> ***(i)** **the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution**;*
>
> ***(ii)** reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;*
>
> ***(iii)** **reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence**;*
>
> ***(iv)** **character, behaviour and standing of the accused and the circumstances which are peculiar to the accused**;*
>
> ***(v)** **larger interest of the public or the State and similar other considerations**.*
>
> *22. **There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner**."*

(Emphasis sullied)

47. In **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791, the Hon'ble Supreme Court explained the principles for considering the claim of release on bail regarding persons accused of economic offences and held that: -

VERDICTUM.IN

> ***"23.*** *... the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But* ***ultimately the consideration will have to be on case-to-case basis on the facts involved therein*** *and securing the presence of the accused to stand trial.*

48. In **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51, the Hon'ble Supreme Court had categorized the offences in 4 categories: -

> *'**Categories/Types of Offences***
>
> *(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.*
>
> *(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.*
>
> *(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.*
>
> *(D) Economic offences not covered by Special Acts."*

49. The offences allegedly committed by the applicant are punishable with imprisonment upto life and his case falls under category B, regarding which the guideline laid down by the Hon'ble Supreme

VERDICTUM.IN

Court is that '*On appearance of the accused in court pursuant to process issued bail application to be decided on merits.'*

50. The Hon'ble Supreme Court reiterated the well settled principle that bail is the rule and jail is the exception. The Hon'ble Supreme Court referred to an earlier decision in the case of **Gurcharan Singh v. State (Delhi Admn.),** (1978) 1 SCC 118 wherein it was held that: -

> *"29. ... **There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail**."*

The Hon'ble Supreme Court further held that: -

> *"**It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail**."*

51. In the case of **Ishwarji Nagaji Mali** (2022) 6 SCC 609, the Hon'ble Supreme Court has held in that: -

> *"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, behavior, 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**."*

(Emphasis supplied)

52. When we consider the facts and circumstances of the case in light of the law laid down in the aforesaid judgments, what we find is that the allegation against the applicant is that he was initially issued a license

VERDICTUM.IN

by the District Magistrate Lucknow authorising him to hold a single DBBL gun. The license did not bear any UID number.

53. Rule 54 (6) of the Arms Rules, 1962, which came into force with effect from 24.07.2012, provides that without a unique identification number having been allotted through the electronic automated system as developed by the National Informatics Centre, no arms license shall be considered as valid with effect from 01.10.2015. Therefore, the submission of the learned counsel for the applicant that Unique Identification Number was introduced in the year 2016 and prior to that, there was no such prescription for issuance of Unique Identification Number, is wrong and the same is rejected. Apparently, the applicant did not take any steps for obtaining a UID number and, therefore, the applicant's license became invalidated with effect from 01.10.2015 as per the Rule 54 (6) of the Arms Rules, 1962.

54. Although the applicant's license issued initially at Lucknow had become invalidated on 01.10.2015, on the strength of the same license he got a license issued at New Delhi on 01.06.2017 and he purchased as many as 7 firearms. He imported a pistol, a rifle and 6 barrels in violation of the import permit issued by NRAI. He imported two barrels of prohibited bores and a pistol with 3 spare barrels without NRAI permit and the pistol and two of the barrels were not permissible for a shooter. He got endorsed a revolver which was not permissible for a shooter and he was having 4431 cartridges in his possession, many of which were metal jacketed and were not permitted to be used by a shooter.

55. The aforesaid illegal conduct is not at all expected of any person, much less from a person who claims himself to be a renowned shooter. Moreover, as the applicant is a Member of Legislative Assembly of U.P., he is expected to pay some higher respect to the laws of the land as compared to any other person.

56. So far as the submission of the learned Counsel for the applicant regarding territorial jurisdiction is concerned, the same may be the subject matter of the pending application under Section 482 Cr.P.C. wherein the prayers for quashing of the charge-sheet and the

VERDICTUM.IN

proceeding have been made. However, for the purpose of the present application, it would be sufficient that the chain of acts allegedly committed by the applicant was initiated by the License granted to the applicant by the District Magistrate Lucknow authorising him to hold a single DBBL gun, in furtherance whereof the applicant got another license issued at New Delhi after obtaining a no-objection from the office of the District Magistrate Lucknow. It has come to light during investigation that the applicant's claim of a permanent residence at New Delhi is false and he is a merely casual visitor of the premises taken on rent at New Delhi.

57. The applicant has a criminal history of 8 cases. One of which is Case Crime No. 88 of 2023 under Sections 387, 222, 186, 506, 201, 120 B, 195 A, 34 IPC & 34, 7, 8, 13 P.C. Act in Police Station Kotwali Nagar Karvi, District Chitrakut. The allegation in that case is that while the applicant was lodged in jail in connection with another case, he wielded such great influence on the authorities that his wife used to frequently visit the jail without seeking any requisite permission from any of the authorities and without any checking. It is alleged that the visits of his wife facilitated the applicant to threaten people by using her mobile phone from inside the jail.

58. The material relied upon against the applicant is the letter sent by the Secretary of NRAI and the cancellation order dated 26.08.2021 issued by the Joint Commissioner of Police, Licensing, New Delhi. Huge quantities of arms and ammunition have been recovered from the applicant's premises at New Delhi. The possibility of witnesses being influenced and evidence being tampered can be assessed from the fact that the applicant has exercised such great influence upon jail authorities in the past as has resulted into frequent visits to the jail by his wife without any permission or without any checking, while she used to carry her mobile phone inside the jail.

59. Having considered the nature of allegations against the applicant and the material relied upon by the prosecution, the status of the applicant as an expert shooter and a Member of Legislative Assembly, the possibility of the applicant being able to influence the witnesses in

VERDICTUM.IN

case of his release on bail, I am of the considered view that the aforesaid facts disentitle the applicant to receive discretion of this Court by enlarging him on bail.

60. Accordingly, the bail application stands **rejected.**

(Subhash Vidyarthi J.)

Order Date - 20.11.2023
Preeti.