

A.F.R.

Court No. - 67 WWW.LIVELAW.IN

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32726 of 2021

Applicant :- Lalit Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Shrikrishna Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard Shri Shrikrishna Shukla, learned counsel for the applicant; Shri M.C. Chaturvedi, learned A.A.G., assisted by Shri S.K. Pal, learned G.A. and Shri Ghanshyam Kumar, learned A.G.A. for the State. Perused the record.

Pleadings are exchanged between the parties and the matter is ripe for final submissions on merit.

Personal appearance of all the police officials pursuant to the earlier order of this Court dated 15.11.2021 is hereby exempted.

By means of the present bail application the applicant, who is facing prosecution in connection with Case Crime No.0356 of 2021, u/s 8/20 of N.D.P.S. Act, P.S.-Phase-2, District-Gautam Budh Nagar, is seeking his enlargement on bail during trial. The applicant is in jail since 14.6.2021.

Shri Shrikrishna Shukla, learned counsel for the applicant has drawn attention of the Court to the F.I.R. lodged by the Sub Inspector Ram Chandra Singh, P.S. Phase-II, NOIDA of Gautam Budh Nagar Commissionerate on 14.6.2021 at 13.34 hours against the lone named accused person Lalit Gupta u/s 8/20 of N.D.P.S. Act at P.S Phase-II, Gautam Budh Nagar with the allegation that the informant, who is Sub Inspector, along with his team members and co-accused Sonu to burst a bigger racket dealing in the psychotropic substance, went to Kakrala

112 Feet Road, the accused Sonu indicated a person sitting over the culvert, that he is a person who deals with the psychotropic substance. The police personnel overpowered that person and caught hold of him. He disclosed his name as Lalit Gupta s/o Ramesh Chandra Gupta, Police Station -Sasni, District -Hathras. The nabbed accused himself disclosed that the plastic gunny bag which he is having, contains cannabis (*Ganja*) and thereafter a usual formality of asking the accused for alleged frisking in front of Gazetted Officer, as contemplated under Section 50 of the N.D.P.S. Act, was made by the informant and the samples of psychotropic substance were made for its testing. The total recovery shown is 29.600 Kgs. of *cannabis* in four packets, said to have been carried by the applicant without any valid license.

The bail application of the applicant was rejected by the learned Additional District & Sessions Judge/F.T.C.-2, Gautam Budh Nagar on 02.07.2021. Hence this bail application.

It is contended by counsel for the applicant that till date there is no laboratory report is on record to substantiate that the alleged seized substance is *cannabis*. Secondly, it was contended that the mandatory requirement of Section 50 of the N.D.P.S. Act has not been followed and as mentioned above, it was a mere formality of the F.I.R. by the informant. There is no independent witness to the alleged recovery, though the incident said to have been taken place in broad day light in an open area. In Para-18 of the affidavit the applicant himself has disclosed that from the Year 2001 to 2017 the applicant has got criminal antecedents of 11 cases, out of which only three cases relate to N.D.P.S. Act and rest of cases are of Section 60 of the Excise Act. Since the applicant is a resident of P.S.- Sasni, District- Hathras, and as such, interestingly all the 11 cases to the credit of applicant

relate to P.S. Sasni, Hathras. From the criminal antecedents of the applicant, it is evident that there is no case registered outside the district Hathras against the applicant. In fact, it is a first case of P.S. Phase-II, Gautam Budh Nagar Commissionerate. In all these cases the applicant has been bailed out and facing trial. After 2017 there is no other case to the credit of the applicant.

Besides this, the primary argument made by the learned counsel for the applicant is that the way and the manner in which the applicant is being involved/dragged in the case is depictive of a typical approach by the police and a false implication by them in nabbing the applicant. Learned counsel for the applicant has filed supplementary affidavit dated 25.8.2021, in which he has tried to expose the typical approach by the police, who for the reason best known to them, nailed the applicant in the present offence. It has been contended by learned counsel for the applicant in the supplementary affidavit that the applicant was, in fact, lifted from his residence at Teacher's Colony Sasni Kotwali, District Hathras by four masked persons in civil dress. A CCTV has recorded every movement of the act of lifting of the applicant by those four persons. The wife of the applicant, who is a typical house maker, was advised by her relatives to make a complaint to the Superintendent of Police, Hathras narrating the entire story for the alleged abduction of her husband by four-five masked persons from her residence on 11.6.2021 around 7.45 P.M. After receipt of said application from the wife of the applicant, S.P. Hathras on his own wisdom entrusted the inquiry to one Shri Vipin Kumar Yadav, S.I. who submitted its report on 5.8.2021. The said report was received by the applicant's wife through R.T.I., and as such, she received that inquiry report on 5.8.2021.

WWW.LIVELAW.IN

In the said inquiry report, given by Shri Vipin Kumar Yadav, addressed to C.O. City Harhras dated 5.8.2021 has made a startling revelation. This was indeed an eye-opener for those who are often indulged in such type of mal-practices. Said report is quoted herein below :

सेवा में,

रिपोर्ट थाना सासनी हाथरस

श्रीमान क्षेत्राधिकारी, महोदय

नगर हाथरस

विषय - पत्रांक ज०सू०अ० 353/21 आवेदिका श्रीमती विनीता गुप्ता w/o ललित गुप्ता नि० शिक्षक नगर कस्बा थाना सासनी जनपद हाथरस के सम्बन्ध में आख्या।

महोदय,

निवेदन है कि संलग्न प्रा० पत्र श्रीमती विनीता गुप्ता w/o ललित गुप्ता नि० शिक्षक नगर कस्बा थाना सासनी जनपद हाथरस की जांच मुझ उपनिरीक्ष द्वारा की गयी तो वाक्यात इस प्रकार पाये गये कि दिनांक 11.06.2021 को वादिया (आवेदिका) के मकान पर चार लोग अपने मुहू पर मास्क लगाये हुए आये थे जो आवेदिका के पति ललित गुप्ता को उठाकर ले गये । जांच से यह बात प्रकाश में आयी कि सादा कपडो जो लोग आवेदिका के मकान पर आये थे वह नोएडा पुलिस के अधिकारी कर्मचारी होने की जानकारी हुई है। नोएडा पुलिस द्वारा थाना सासनी पर आने की अथवा किसी व्यक्ति को ले जाने की कोई सूचना उपलब्ध नहीं करायी है। वाद में काफी जानकारी पर ज्ञात हुआ कि थाना फेस II नोएडा पुलिस आयी थी। आवेदिका के पति के सम्बन्ध अन्य कोई जानकारी प्राप्त नहीं हो सकी है।

संलग्न

आख्या सादर सेवा में प्रेषित है।

1-आवेशमय प्रा०पत्र-3 वर्क

2-आख्या- 1 वर्क

Sir

Submitted

sd ill.

6-8-21

ह०-अप०

5-8-21

(विपिन कुमार यादव)

विपिन कुमार यादव

उ०नि०

थाना- सासनी

जनपद- हाथरस

PNO- 132550028

WWW.LIVELAW.IN

Today, when the case is taken up, Shri M.C. Chaturvedi, learned A.A.G., assisted by Shri S.K. Pal, learned G.A. candidly and fairly conceded the fact that there are excesses made on the part of the police of concerned police station. There is neither any *Aamad Report* at the police station at Hathras nor the police personnel were in proper dress, nor any proper process was issued by the concerned court to arrest such type of persons. This lifting of the applicant was affected way back on 11.6.2021 by those unnamed, masked persons and S.I. Ram Chandra Singh, in order to win the laurels of his senior officers, created a sham prosecution story implicating the applicant in this offence. It is simply a pitiable on the part of the informant, who brought down the esteem of the police to the shambles. There seem that the image of police. No doubt, the applicant has a criminal history of 11 cases, but no one has got an authority to add one more to his credit without having any substantial and credible evidence. In the criminal law there is an aged old phrase "GIVE A DOG BAD NAME AND SHOOT HIM" and the police has done so in the present case.

The applicant himself is facing the misery of his own conduct but on account of his past credentials the police personnel are not authorized to add one more to his credit. The entire arrest is flimsy, fallacious and based on a make-believe theory.

The Court records its strongest exception and concern about the way and the functioning of the police. The Court expects from the S.S.P. Gautam Budh Nagar to take a stringent criminal action against the informant of the present F.I.R. and identify all those four-five masked persons in a civilian dress, who lifted the applicant from his residence on the odd hours of the night without any authority or reason, after holding an internal departmental inquiry by him alone, and if they are found guilty,

the S.S.P., Gautam Budh Nagar is further directed to lodge an F.I.R. against all the erring persons including the informant of the Case Crime No.356 of 2021, P.S.- Phase II, G.B. Nagar as well as all the four-five persons who were masked and pounced upon the applicant from his residence, lifted him and booked him in the present offence without any rhyme or reason and intimate the Court by filing a proper affidavit before the Court concerned i.e. the learned Additional District & Sessions Judge/F.T.C.-II, Gautam Budh Nagar latest by 31st December, 2021 as stringent action would also be taken against the S.S.P. concern for the willful defiance of this Court's order.

The Court further expects that the entire modus operandi adopted by the police, wherein the applicant has been lifted from his residence and planted in the present case, puts the entire prosecution story is “**obscura nubes dubiorum**” (under the dark cloud of doubts). The alleged seizure of psychotropic substance too is a doubtful proposition and makes entire prosecution story as a malicious prosecution and the arrest an illegal one.

The Court appreciates the assistance provided by Shri M.C. Chaturvedi, learned A.A.G., who fairly conceded the drawbacks and the loopholes of the prosecution.

Taking into account the manner and the way in which the applicant has been lifted and involved in the present case and keeping in view the nature of the offence, evidence on record regarding complicity of the accused and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant **Lalit Gupta**, 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.

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

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.

Since the bail application has been decided under extra-ordinary circumstances, thus in the interest of justice following additional conditions are being imposed just to facilitate the applicant to be released on bail forthwith. Needless to mention that these additional conditions are imposed to cope with emergent condition-:

- 1. The applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.***
- 2. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.***
- 3. The computer generated copy of such order shall be self attested by the counsel of the party concerned.***
- 4. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.***

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 18.11.2021
Sumit S/M. Kumar