

Court No. - 6

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Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22305 of 2021

Applicant :- Sanjay@ Mausam

Opposite Party :- State of U.P.

Counsel for Applicant :- Santosh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Heard Sri Santosh Kumar Shukla, learned counsel for the applicant and learned AGA for the State through video conferencing mode.

A first information report was lodged against the applicant as Case Crime No. 725 of 2020 at Police Station- Kotwali Auraiya, District- Auraiya on 14.09.2020 under Section 394 IPC.

The bail application of the applicant was rejected by learned Special Judge (Dacoity Affected Area)/Additional Sessions Judge, Auraiya, on 02.03.2021.

The applicant is in jail since 26.09.2020, pursuant to the said F.I.R.

Sri Santosh Kumar Shukla, learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. He contends that the F.I.R. was lodged seven days after the incident. The delay is fatal to the case of the prosecution. The applicant was not named in the F.I.R. There are no independent witnesses to the recovery. False recovery of some articles has been shown from the applicant. The applicant has satisfactorily explained his criminal history. Lastly it is submitted by Sri Santosh Kumar Shukla, learned counsel for applicant that the applicant shall not abscond, and will fully cooperate in the criminal law proceedings. The applicant shall not tamper with the evidence nor influence the witnesses in any

manner.

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Learned A.G.A could not satisfactorily dispute the aforesaid submissions from the record. Learned A.G.A. does not have any instructions from the police authorities who failed to provide instructions to the learned A.G.A. despite ample time being given for the same.

This Court repeatedly noticed failure of the police authorities to provide instructions to the learned Government Advocate of bail applications from time to time as repeatedly observed. Once the police authorities have been alerted to the fact that there failure to provide instructions in time strikes at the root of law. It often leads to unjustified incarceration of an accused in jail. In this regard the following order is being extracted hereunder:-

"Instructions from the police authorities were not available with the Additional Government Advocate. Consequently the Additional Government Advocate was not in a position to present the full and true facts of the case and the bail application could not be heard. No explanation was given for failure on part of the police authorities to furnish the appropriate instructions to the AGA, despite ample time being given to the police authorities. The Court was constrained in the circumstances to direct the SSP/ DIG to be present before the Court through video conferencing.

In compliance of the order of this Court dated 19.05.2021, Sri Amit Pathak SSP/ DIG, Ghaziabad is present through video conferencing.

Sri Vinod Kant, learned Additional Advocate General submits that instructions are now available. It is further submitted on behalf of the State that an enquiry has been ordered into the failure of the concerned official to send timely instructions to the Government Advocate in this case for the purposes of contesting the bail application.

The purpose of giving advance notice of bail applications to the office of Government Advocate is to ensure that police authorities/ prosecution are able to furnish timely instructions in the case to the Government Advocate. The Government Advocate/ A.G.As can assist the Courts in the hearing of the bail applications only if full and complete instructions are available with them before the bail applications is taken up for hearing. The right of an accused to have his bail application heard by the Court within a reasonable time has been entrenched as a constitutional liberty. The right flows from Article 21 according to pronouncements of Constitutional Courts. (See: Ajeet Chaudhary Vs. State of U.P. and another reported at

With a view to streamlining the procedure for providing timely instructions to the GA/AGA certain directions were issued by this Court in Ajeet Chaudhary (supra). The aforesaid case was related to offences under the SC/ST Act. However, an analogous procedure can also be created for other criminal cases as well. Failure of the police authorities to provide timely instructions to the GA/ AGA in bail applications causes delay in the hearing of the bail applications, and often leads to unjustified incarceration of an accused in jail. The concerns expressed in Ajeet Choudary (supra) are applicable to all bail applications. The timelines in the procedure to provide instructions may vary as per the provisions of law. But the timeline has to be defined to ensure that hearing of the bail applications is not delayed indefinitely to the detriment of the accused/ bail applicant.

Sri Vinod Kant, learned Additional Advocate General could not inform the Court about compliance of directions issued by this Court to the competent police authorities in Ajeet Chaudhary (supra), despite grant of opportunity. Sri Vinod Kant, learned Additional Advocate General however categorically assured the Court that the State Government has an unconditional commitment to uphold the rule of law and to comply with the orders passed by this Court in letter and spirit.

The Court has good reason to trust the statement of the learned Additional Advocate General made at the bar regarding implementation of Court orders; but equally the Court has strong cause to verify the actions of the state officials to comply with the Court orders. Sri Vinod Kant, learned Additional Government Advocate also states that the police authorities will streamline the process of imparting instructions to the GA/AGAs in bail applications and have no objection to create a procedure for the same.

The statement of Sri Vinod Kant, learned Additional Advocate General regarding expeditious compliance of directions issued in Ajeet Chaudhary (supra) is reassuring. The surest foundation of the rule of law and stability of constitutional order lies not only in the existence of an independent judiciary; but equally in the regard shown by every constitutional organ of governance to the fundamental rights of all citizens, and actions of state officials to diligently comply with the orders passed by the Court.

The process of furnishing instructions to the GA/ AGA before hearing of bail applications has to contain safeguards which protect the constitutional liberties of the bail applicants/ accused persons. To achieve the aforesaid, the procedure has to be transparent, with well defined responsibilities, and definite timelines. The responsible officials should be accountable for failures to adhere to the said procedure and timelines stated therein.

The Director General of Police, U.P. Police is directed to ensure that a fair, transparent and clear procedure for supplying instructions to the GA/AGA in bail applications before the High Court is created and implemented across the State of U.P. The procedure shall include the designation of the officials, the tasks or duties which they have to discharge, and a definite time frame for such purpose. It shall be ensured that there is constant oversight of the implementation of such procedure

and appropriate departmental action as per law is taken against officials who without good cause fail to discharge their assigned duties therein.

The Director General of Police, U.P. Police, is commanded to comply with the directions within a period of eight weeks as suggested by Sri Vinod Kant, learned Additional Advocate General. The affidavit regarding compliance of the directions passed in this order, as well in Ajeet Chaudhary (supra) shall be filed on behalf of DG, U.P. Police before the Registrar General on or before 06.08.2021.

Put up this matter on 26.05.2021 in the list of fresh cases before appropriate Bench to enable the learned counsel for the applicant to explain the criminal history of the applicant, as disclosed by the learned Additional Advocate General on basis of instructions.

Creation of a similar procedure for all District Courts may also be considered if deemed appropriate.

Presence of D.I.G/ S.S.P, Ghaziabad is exempted on future dates"

It may be added that disregard shown by the senior most officials to the orders passed by the Court has grave consequences on the rule of law in the country.

It was assured by the learned A.G.A. in Criminal Misc. Bail Application no. 19839 of 2021, that the State Government is committed to uphold the rule of law in the State even it is taken on its face value. However this repeated deviation merely reflect aberrations in the system and faults on the part of individual officials who need to be appropriately counselled in this regard.

It is hoped that expeditious steps are being taken by the police authorities for compliance of the directions given to the Director General of Police, U.P. Police in the above said case.

A copy of this order to be served upon the Director General of Police, U.P. Police through Government Advocate.

Courts have taken notice of the overcrowding of jails during the current pandemic situation (**Ref.: Suo Motu Writ Petition (c) No. 1/2020, Contagion of COVID 19 Virus in prisons before the Supreme Court of India**). These circumstances shall also

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be factored in while considering bail applications on behalf of
accused persons.

I see merit in the submissions of Sri Santosh Kumar Shukla,
learned counsel for the applicant and accordingly hold that the
applicant is entitled to be enlarged on bail.

In the light of the preceding discussion and without making any
observations on the merits of the case, the bail application is
allowed.

Let the applicant- Sanjay@ Mausam be released on bail in Case
Crime No. 725 of 2020 at Police Station- Kotwali Auraiya,
District- Auraiya registered on 14.09.2020 under Sections 394,
411, 420, 467, 468, 471 IPC, on his furnishing a personal bond
and two sureties each in the like amount to the satisfaction of
the court below. The following conditions be imposed in the
interest of justice:-

(i) The applicant shall remain present before the trial court on
each date fixed, either through his counsel or personally as and
when directed by the learned trial court. In case of his absence,
without sufficient cause, the trial court may proceed against him
in accordance with law.

(ii) The applicant shall remain present, in person, before the
trial court on the dates fixed for (i) opening of the case, (ii)
framing of charge and (iii) 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.

(iii) In case, the applicant misuses the liberty of bail during
trial, the trial in order to secure his presence may issue a

proclamation under Section 82 Cr.P.C. In case the 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 of the Indian Penal Code.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(v) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(vi) 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.

Order Date :- 10.6.2021

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