

A.F.R.

Reserved On 6.5.2022
Date of Delivery 12.5.2022

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5491 of 2019

Applicant :- Gulam Sarvar

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammed Amir Naqvi, Amjad Siddiqui, Bal Keshwar Srivastava, Kapil Mishra, M. Usman Siddiqui

Counsel for Opposite Party :- G.A., A S G, S B Pandey

Hon'ble Krishan Pahal, J.

1. Heard Sri Jyotindra Mishra, learned Senior Counsel assisted by Sri Kapil Mishra, learned counsel for the applicant and Sri Anurag Kumar Singh, learned counsel for the CBI and also perused the material available on record.
2. By means of the present bail application, the applicant seeks bail in Case Crime No. 810 of 2018, under Sections 147, 149, 386, 329, 420, 467, 468, 471, 394, 506, 120-B, 364-A IPC, Police Station-Krishna Nagar, District- Lucknow, during the pendency of trial.

BRIEF FACTS OF THE CASE

3. Facts in brief giving rise to the present application are that the Informant/victim is a resident of Alambagh, Lucknow and engaged in the real estate business having his office at Gomti Nagar, Lucknow. At the time of the offence, the accused Atique Ahmad, Ex-Member of Parliament, Phulpur, Allahabad was detained in Deoria Jail and he had tried to pressurize the Informant for extortion of money for about two years and out of fear, the Informant had also given him some amount as such. The two henchmen of Atique Ahmad, namely, Mohd. Farooq and Jaki Ahmad had been trying to extort money from the Informant for about several months. The said two accused persons had also taken possession of the office of the Informant forcibly and got their names

inducted in the board of the company and procured digital signatures of the Informant and his sister Aarti Jaiswal. Even after that the Informant did not transfer any shares of the company to them. On 26.12.2018, another goon of Atique Ahmad took the Informant to Deoria Jail where Atique Ahmad along with his son Umar and 10-12 other persons were found present. The two accomplices of Atique Ahmad, namely, Jafarullah and Gulam Sarvar (the present applicant) had beaten the Informant mercilessly thereby breaking his fingers and causing him several external and internal injuries. The accused Atique Ahmad in the jail premises itself got the companies M.J. Infra Housing Private Limited, M.J. Infra Green Private Limited, M.J. Infra Land L.L.P. Private Limited and M.J. Infra State Private Limited transferred forcibly in the name of his associates Mohd. Farooq and Jaki Ahmad. The accused Atique Ahmad has even retained the Fortuner Car of the Informant bearing No. UP-32 JR 1804 with him. It has also been alleged in the FIR that the accused Atique Ahmad had obtained signatures of the Informant on blank letter heads including his resignation letters and also pressurized the Informant to make forged signatures of his sister on the blank papers. The accused Atique Ahmad and his associates forcibly obtained the digital signatures of the Informant and his sister and thereby got the names of their associates inducted in all the aforesaid companies.

4. The instant FIR has been lodged at Police Station- Krishna Nagar, Lucknow. The Supreme Court of India vide its order dated 23.4.2019 passed in Writ Petition (Civil) No.699 of 2016 in the matter of Ashwani Kumar Upadhyay and Others Vs. Union of India and Others transferred the investigation of the case to Central Bureau of Investigation (CBI) and was also directed to submit quarterly status report of the investigation to the Court. The main accused Atique Ahmad was then shifted to Ahmedabad Jail, Gujarat.

RIVAL CONTENTIONS

5. Sri Jyotindra Mishra, learned Senior Counsel appearing on behalf of the applicant has stated that the applicant is being maliciously prosecuted in the present case. The jurisdiction of the case falls within the Police Station- Gomti Nagar, Lucknow and not Krishna Nagar where the instant FIR has been initially lodged. Learned Senior Counsel has further argued that the statement of the Informant has been recorded four times by the I.O. and in each of the subsequent statement, he has improvised from the previous one. Initially, the two statements were recorded by the local police and the subsequent two have been recorded by the CBI. Absolutely vague allegation has been made in the statement of the Informant that the applicant was present in Deoria Jail with Jafarullah and had even beaten him up thereby causing grievous hurt to him.

6. As per the prosecution allegation, one goon of accused Atique Ahmad had taken Informant forcibly to Deoria Jail by a Fortuner Car No. UP-32 JR 1804, though it is impossible that a single unarmed person would forcibly pickup the Informant at Lucknow and take him to Deoria Jail and during such a long distance from Lucknow to Deoria Jail, the Informant did not raise any alarm while he had ample opportunity to do so and resist. The allegation against the applicant is that his black car was following the said Fortuner car no. UP-32 JR 1804 of the Informant from Lucknow to Deoria Jail. He has dropped the Informant back 100 metres before his house by his car as the alleged Fortuner of the Informant was forcibly retained by co-accused Atique Ahmad. On the way to Deoria Jail, there are six toll booths and surprisingly, there is no CCTV footage to indicate that the applicant had followed the said Fortuner car of the Informant. There is nothing on record to suggest that the applicant was in Deoria jail in connivance with the jail authorities.

7. Learned Senior Counsel has also pointed out several contradictions in the two supplementary statements of the Informant/victim recorded by the I.O. regarding the complicity of the applicant. The prosecution version is doubtful, suspicious and cannot be relied upon.

8. Learned Senior Counsel for the applicant has next contended that the charge-sheet has already been filed in the matter and the trial is not going forward and not even the charge has been framed against the applicant. The CBI is also not interested in getting the trial concluded expeditiously as on the last three occasions, the public prosecutor of the CBI was not present in the Court and the case was adjourned only on this ground.

9. Learned Senior Counsel for the applicant has also relied upon the judgement of Supreme Court passed in the case of ***Union of India versus K.A. Najeeb***¹, and the relevant para-16 reads as under:-

"16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

10. Learned Senior Counsel for the applicant has also submitted that the four co-accused persons, namely, Irfan, Nitesh Mishra,

Mahendra Kumar Singh and Pawan Kumar Singh, have already been enlarged on bail by the court concerned passed in Bail Application Nos. 7363 of 2019, 12768 of 2021, 14713 of 2021 and 1786 of 2021, vide orders dated 30.11.2021, 10.12.2021 and 15.12.2021, respectively. The applicant is languishing in jail since 18.2.2019 having no criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with the trial.

11. Per contra, Sri Anurag Kumar Singh, learned counsel for the CBI has vehemently opposed the bail prayer of the applicant on the ground that it was the applicant who had beaten the Informant in jail premises along with one Jafarullah. After retaining the alleged Fortuner car by Atique Ahmad, the Informant was sent back to his house in the car of applicant being kidnapped by the co-accused Gulam Moinuddeen Siddiqui. The applicant is named in the FIR and his name has also come up in every statement of the victim. There is no contradiction or discrepancy in the statement of the Informant with regard to the applicant.

12. Learned counsel for the CBI has further argued that the applicant and the co-accused persons are dreaded criminals of the area and out of their fear, the Informant could not dare to depose against them. Several witnesses have been put under Witness Protection Programme. He has further argued that looking at the seriousness and gravity of the subject matter, the investigation was entrusted to CBI by the order of Supreme Court and also the main accused Atique Ahmad has been shifted to Ahmedabad Jail, Gujarat. The local police had also filed charge-sheet against the applicant. The applicant along with other co-accused persons had also forced the Informant to put his sister's forged signature on blank papers/letterheads.

13. Learned counsel for the CBI has further submitted that the case of the applicant is not at par with the other co-accused persons who

have been enlarged on bail. The trial could not proceed further owing to Covid-19. The offence is not against a particular person, but against the society as a whole. Investigation is pending against the jail officials involved in the said offence.

14. Learned counsel has fairly conceded the fact that there is no criminal history of the applicant but has stated that he is the main associate of co-accused Atique Ahmad who had been five times M.L.A., once an M.P. and a notorious criminal, against whom 106 cases are pending trial including the heinous offences and out of his fear, the FIR has been lodged after a delay. There is every likelihood that he shall misuse the liberty of bail as he is an influential person and the main associate of Atique Ahmad, therefore, he does not deserve any indulgence. In case, the applicant is released on bail, he will misuse the liberty of bail by extending threat and intimidation to the prosecution witnesses.

CONCLUSION

15. It would be inappropriate to discuss the evidence in depth at this stage because it is likely to influence the trial court but from the perusal of the evidence collected during investigation and the charge-sheet, it appears that the complicity of the applicant is well established by the statements of the Informant. The applicant had followed the alleged Fortuner car of the Informant to Deoria Jail and beaten him up in jail premises coercing him to sign the papers and had dropped him back near his house.

16. In the changing social circumstances, it has now become obvious that nobody dares to depose against the dreaded and hardened criminals out of fear. The Informant, who himself is a victim could garner some courage as some point of time to depose against such high profile criminals. The crime seems to have been committed after a well orchestrated plan to deprive the Informant/victim of his

valuable assets and the culpability of applicant cannot be ruled out from the evidence adduced.

17. It is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. A ratio decidendi of the judgement of the Apex Court in *Anil Kumar Yadav Vs. State (N.C.T.) of Delhi and another*², has stated that in serious crimes, the mere fact that the accused is in custody for more than one year, may not be a relevant consideration to release the accused on bail.

18. Considering the facts and circumstances of the case, the nature of offence, severity of offence, threat perception of the witnesses, complicity of accused, involvement of higher echelons of society as well as the rival submissions advanced by the learned counsel for the parties and without expressing any opinion on the merits of the case, I am not inclined to release the applicant on bail.

19. Accordingly, the bail application of the applicant is **rejected**.

20. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

21. However, it is directed that every endeavor shall be made by the trial court to conclude the trial expeditiously, if there is no other legal impediment.

Order Date :- 12.5.2022

Siddhant

(Justice Krishan Pahal)