

Court No. - 88

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18519 of 2023

Applicant :- Ibran @ Sheru

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State submits that instructions have been received and he has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicant that the applicant has been falsely implicated. There is no independent witness of the recovery. There is no allegation of slaughter against the applicant. The procedure for seizure as provided under the Criminal Procedure Code has not been followed. There is no report that the meat recovered is beef.

4. It is further submitted by learned counsel for the applicant that 30.5 kg. of meat is said to have been recovered from the house of the co-accused, Ivran @ Sheru. It is submitted that the applicant is a painter and was doing his job of painting in the house when the raid was conducted. There is no other evidence linking the applicant with the alleged recovery. The applicant has been falsely implicated in the case. The applicant has no criminal history. Applicant is languishing in jail since 10.03.2023 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

5. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case. It is submitted that U.P. Act No. 1 of 1956 is enacted to prohibit and prevent the slaughter of cow and its progeny in Uttar Pradesh. The applicant has been found to have committed an offence under the abovementioned act.

6. Learned AGA for the State has not shown that the applicant has been previously convicted under the provisions of U.P. Act No. 1 of 1956.

7. No material has been shown by learned AGA for the State to demonstrate that the applicant has slaughtered or cause to be slaughtered or offer or cause to be offered for slaughter a cow, bull or bullock in any place in Uttar Pradesh. The alleged act cannot be stated to come within the ambit of section 2(d) of U.P. Act No. 1 of 1956. There is no independent witness of the recovery. Mere possession of meat by itself cannot amount to committing, abetting, or attempting an offence under section 3 of the Act No. 1 of 1956. No report of competent authority or authorised laboratory has been shown to demonstrate that the meat recovered is beef. The maximum sentence imposed by section 3 read with section 8 of U.P. Act No. 1 of 1956 is ten years.

8. No material circumstance has been shown to suggest that the applicant was selling or transporting or offering for sale or transport or cause to be sold or transported beef or beef products. No report of competent authority or authorised laboratory has been shown to demonstrate that the substance recovered is beef or beef product. There is no independent witness of recovery. The procedure prescribed under section 100 of the Criminal Procedure Code has not been followed. The alleged recovery of substance has been made by police personnel. A case of false implication has been raised on behalf of the applicant. Learned AGA for the State has not shown any fact or circumstance which will amount to committing, abetting, or attempting an offence under section 5 of the Act No 1 of 1956. Even otherwise mere carrying of meat by any person, by itself cannot amount to sale or transport of beef or beef products unless it is shown by cogent and sufficient evidence that the substance recovered is beef. In the present case the prosecution has not demonstrated with cogent evidence that the substance recovered is beef or beef products. The maximum sentence imposed by section 5 read with section 8 of U.P. Act No. 1 of 1956 is ten years.

9. In view of the abovementioned, prima facie, the applicant is not guilty under the provisions of U.P. Act No. 1 of 1956.

10. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for Bail.

11. It is not the case of the State that the applicant has not

cooperated in the investigation or proceedings before the trial court.

12. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

13. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

14. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

15. Learned AGA for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

16. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties 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.

17. Let the applicant-**Ibran @ Sheru**, involved in Case Crime No. 132 of 2023, under Section 3/5/5-A/8 of Cow Slaughter Act, Police Station Puranpur, District Pilibhit be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

18. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 25.5.2023

VMA