

A.F.R.**Court No. - 83****Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 21738 of 2022**Applicant :-** Kamlesh Pathak**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Umesh Singh, Swati Agrawal Srivastava**Counsel for Opposite Party :-** G.A., Anurag Shukla, Dharmendra Shukla**Hon'ble Krishan Pahal, J.**

1. List has been revised.
2. Supplementary affidavit filed today is taken on record.
3. Heard Shri V.P. Srivastava, learned Senior Counsel assisted by Ms. Swati Agrawal Srivastava, counsel for the applicant and Shri Anil Tiwari, learned Senior Counsel assisted by Shri Anurag Shukla, counsel for the informant as well as Shri Vibhav Anand Singh, learned A.G.A. for the State.
4. By means of the present bail application, the applicant seeks bail in Case Crime No.462 of 2020, under Section 3(1) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Auraiya, District- Auraiya, during the pendency of trial.

PROSECUTION STORY:

5. As per prosecution story, Ram Sahai, Station House Officer, P.S. Auraiya, District Auraiya alongwith other colleagues, in an official duty, was checking the vehicles and was involved in maintaining peace and order in the area and also to maintain lock-down in lieu of Covid-19 conditions by the order dated 11.07.2020 of District Magistrate. He received an information that Kamlesh Pathak

is running an organized and active gang in the area as its' leader. The members of the said gang are (i) Ramu Pathak (ii), Santosh Pathak, (iii) Kuldeep Awasthi @ Pappu, (iv) Vikalp @ Chenu Awasthi, (v) Rajesh Shukla (Bhagwatacharya), (vi) Avneesh Pratap Singh, (vii) Sonu @ Lovkush, (viii) Asheesh Dubey, (ix) Shivam Awasthi and (x) Ravindra @ Lalla Chaubey. The said leader of the gang Kamlesh Pathak alongwith all the aforesaid members is involved in garnering illegal ransom, illegally possessing government land, fighting, firing and other illegal criminal activities etc. The applicant and his gang is not afraid of firing in broad day light. The members of the gang had got the various cases instituted against them settled in the light of the said terror. Nobody dares to depose on oath in court against them whereby all those cases get culminated into acquittals.

6. On 15.03.2020, Kamlesh Pathak and his gang members had caused day light murder of advocate Manju Chaubey and his sister Sudha Chaubey to take illegal possession of land. The public at large are so much terrified of the members of the gang that nobody dares to come forward and speak or make a statement against them. Leaving them free, shall be against the interest of the public at large. The members of the gang keep on committing the offences referred in Sections 16, 17 and 22 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act. Thus they usurped the properties of others and even get instituted false cases against them. It will be in the interest of public at large to book the members of the gang under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986. Thus, in view to put an end to the said anti-social activities of the gang, a gang chart has been prepared by him on 26.02.2020, which was sent for the sanction before the learned District Magistrate, Auraiya. After receiving the sanction from the office of the District Magistrate, Auraiya, the aforesaid eleven members of the gang were

booked under Section 3(1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986.

RIVAL CONTENTIONS:

For Applicant:

7. Learned Senior Counsel for the applicant has stated that he has been booked owing to the political rivalry and has nothing to do with the said offence. Learned Senior Counsel has further stated that the applicant has been granted bail in the predicate offence in Case Crime Number 189 of 2020 under sections 147, 148, 149, 302, 307, 506 IPC and Section 7 of Criminal Law Amendment Act, Police Station Kotwali Auraiya, District Auraiya. Learned Senior Counsel has further stated that the bail of the applicant has even been rejected under Section 25/27 of Arms Act by the court concerned in Case Crime No. 190 of 2022.

8. Learned Senior Counsel has further stated that the said criminal history stands explained as the applicant is on bail in the case no.1 mentioned in the gang-chat and the bail application in the case No.2 mentioned in the gang-charge i.e. Case Crime No.190 of 2022 is being pressed alongwith this bail application only. Learned Senior Counsel has further stated that all the certified copies with respect to the criminal antecedents have been filed. In all, 37 cases have been instituted against the applicant. Learned Senior Counsel has further stated that, as mentioned in paragraph 3 of the supplementary affidavit filed today, the closure report has been filed in twelve cases from serial number 3 to 14 and the same have been accepted by the courts concerned.

9. Learned Senior Counsel has further stated that the applicant has been acquitted in sixteen cases i.e. from serial number 15 to 30. Three cases, that have been explained at serial number 31 to 33, have been withdrawn by the State. Learned Senior Counsel has further stated

that the two cases, mentioned at serial number 34 and 35, are not proceeding any further as there is no detail on record about those cases and in two other cases, mentioned at serial number 36 and 37, the applicant has been enlarged on bail. Learned Senior Counsel has further stated that thus in effect only four cases could be stated to be pending against the applicant. Learned Senior Counsel has also referred to the letter sent by the Senior Consultant at Centre jail, Agra to the Senior Superintendent of jail whereby it has been mentioned that the applicant was suffering from K/C/O T2 DM (Type-2 Diabetes mellitus) with systemic hypertension with anxiety neurosis. Learned Senior Counsel has further stated that the applicant was sent to the S.N. medical College, Agra where several tests were undertaken and then he was referred to King George's Medical College, Lucknow whereby he was examined and his E.C.G., 2D Eco and T.M.T. tests were undertaken and C.T. coronary angiography was referred to be conducted with respect to the applicant. Learned Senior Counsel has further stated that the applicant is a patient suffering from cardiovascular disease and being a senior citizen is entitled for bail.

10. Learned Senior Counsel has further stated that he has been booked out of political vendetta as he is an ex-MLA and ex-minister belonging to the Samajwadi Party and is against the current political set up.

11. Learned Senior Counsel has further stated there is no *actus reus*, which implies the guilty act, assigned to the applicant. Learned Senior Counsel has further stated that the rules have been framed in Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act in the year 2021 and the present FIR is of the year 2020, as such the said rules are not applicable to the applicant. Learned Senior Counsel has further stated that the applicant is not a previous convict. The ingredients of Section 19 sub-clause 4 stands fulfilled and the applicant is entitled for bail. Several other submissions have been

made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. The criminal history assigned to the applicant stands explained. The applicant is languishing in jail since 16.03.2020. In case, the applicant is released on bail, he will not misuse the liberty of bail.

12. Learned Senior Counsel has placed much reliance on the judgment of this Court passed in the case of **Akbar vs. State of U.P.**¹, whereby it has been opined that at the time of trial if the delinquent has been acquitted, the same cannot be considered as a part of his criminal antecedents. To which, he has referred the Government Order of the Director General of Police, Uttar Pradesh dated 20.11.2003.

13. Learned Senior Counsel has further placed much reliance on the judgment of this Court passed in the case of **Ashok Dixit vs. state of U.P. and Another**², stating that the provisions of the Act cannot be used as a weapon to wreck vengeance or harass or intimidate innocent citizens or to settle scores on political rivals. The relevant para 75 is being reproduced as under:-

“75. But nevertheless we must sound a note of caution. Provision of the Act cannot be used as a weapon to wreak vengeance or harass or intimidate innocent citizens or to settle scores on political or other fronts. The prosecution has to bear in mind that it has to bring home the guilt. Then, there is a further provision for appeal. Thus, the power of judicial review of this Court has been preserved. It is ultimately found that a person was proceeded with in sheer bad faith out of malice and by way of political vendetta the authorities do not enjoy any immunity under Section 22 of the Act. This immunity is confined only to acts done in good faith.”

14. Learned Senior Counsel has also placed much reliance on the judgment of Apex Court passed in the case of Dharmendra Kirthal vs. State of U.P. and Another³, whereby it has been opined that personal

1 2012 (76) ACC 187

2 MANU/UP/0543/1987

3 (2013) 8 SCC 368

liberty has its own glory and is to be put on a pedestal in trial to try offenders, it is controlled by the concept of “rational liberty”. In essence, liberty of an individual should not be allowed to be eroded but every individual has an obligation to see that he does not violate the laws of the land or affect others’ lawful liberty to lose his own.

15. Learned Senior Counsel has also placed reliance on the judgment of this Court passed in **Criminal Misc. Bail Application No.4691 of 2022 (Zeba Rizwan vs. State of U.P.)** dated 23.05.2022, whereby the locus of the counsel for the victim in the predicate offence was questioned and it was opined that allowing him to argue the matter shall open a pandora’s box.

For State:

16. Per contra, learned Senior Counsel for the informant in the predicate offence and learned A.G.A. have vehemently opposed the bail application on the ground that the applicant is the person who very much qualifies to the definition of gangster defined under the Act and it has been at the outset stated that the bail granted to the applicant in the predicate offence of Section 302 IPC is without jurisdiction and has been challenged in the Apex Court by filing Special Leave to Appeal (crl.) No(s). 6080 of 2022 dated 13.04.2022.

17. Learned Senior Counsel has further stated that the applicant is the name of terror in the area and his muscle power is but evident from the fact that no witnesses did ever dare to depose against him in court and almost all of them have turned hostile leading to his acquittal.

18. Learned Senior Counsel has further stated that the predicate offence is a broad day light murder of an advocate and his sister at 3:00 PM and two other persons were injured in it. The bail granted is challenged, as such the applicant is not entitled for bail. Learned Senior Counsel has further stated that the influence of the applicant is but evident from the factum that the closure report has been filed in

twelve cases by the police which include attempt to murder, forgery and attempt to dacoity etc.

19. Learned Senior Counsel has further stated that the supplementary affidavit filed today on behalf of the applicant is based on false facts and a perjury has been committed in it as the cases referred as acquittal cases in it at serial nos.25, 26 and 29 have been withdrawn, as such may have been listed in the column of withdrawn State cases. Thus, in all six cases have been withdrawn by the State. The trial is going on in the predicate offence and there is every likelihood of applicant influencing the witnesses as he has the long criminal antecedents.

20. Learned Senior Counsel has further stated that even the criminal history of two cases has not been explained whereby it has been stated that the cases are not proceedings any further. This cannot be considered as a proper explanation of the said criminal history. The bail of the applicant in Case Crime No.190 of 2020, under Section 25/27 of Arms Act is still pending and is being argued today in this Court.

21. Learned Senior Counsel has further placed much reliance on the judgment of this Court passed in Criminal Misc. Bail Application No.23584 of 2014 (Rohit @ Rohit Yadav vs. State of U.P.) dated 06.08.2014, whereby the counsel for the informant in the predicate offence was permitted to oppose the bail application.

CONCLUSION:

22. The latin term '*actus reus*' implies guilty act. Thus, it is the physical component of crime. It is true that there can be no offence without a criminal act. We have to consider *mens rea* alongwith *actus reus*. *Actus reus* is latin for guilty act and *mens rea* is latin for guilty mind. Both elements are required for the criminal act to be complete. The *actus reus* and the *mens rea* are to be inferred from the contents of the allegations made by the prosecution whereby the applicant is

stated to be having criminal antecedents and in the said predicate offence, the applicant is stated to have exhorted the other co-accused persons to fire at the deceased and injured persons. Thus, the element of *actus reus* and *mens rea* are present in the said case and being a leader of the gang, the same find place in the present case also.

23. With respect to a gangster, an inference can be drawn from the circumstances. The delinquent herein is a legislature aka an Ex-minister, but the same cannot absolve him of the activities committed impersonal.

24. It is true that under normal circumstances, if otherwise the case of the delinquent for bail is made out, the criminal antecedents are not to be considered, but herein the gravity of offence and the criminal antecedents that too the cases of murder, attempt to murder, attempt to dacoity and forgery etc. weigh against the applicant.

25. It is true that there is a possibility of misuse of the legislations that too depends on the person executing it. The present case does not seem to be a misuse of the act and the applicant having such a large criminal antecedents and being the head of the gang is not entitled for bail.

26. From the perusal of the record, I do not find that there are reasonable grounds for believing that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail as is the requirement of Section 19(4) of the Act.

27. Considering the submissions advanced by the counsel for the parties, nature of allegations, gravity of offence and all attending facts and circumstances of case, the Court is of the opinion that it is not a fit case for bail. Hence, the bail application of applicant is hereby **rejected**.

28. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously, if there is no legal impediment.

29. 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.

Order Date :- 23.02.2023

Ravi Kant

Krishan Pahal, J.