

Court No. - 91

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8054 of 2022

Applicant :- Nahid Hasan

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajiv Lochan Shukla,Ravindra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

Heard Sri Rajiv Lochan Shukla, learned counsel for the applicant and Sri Rishi Chaddha, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Nahid Hasan**, seeking enlargement on bail during trial in connection with Session Trial No. 730 of 2022, Case Crime No. 570 of 2019, under Section 406, 504, 506, I.P.C., registered at Police Station Kairana, District Shamli.

The first information report of the present case was lodged on 26.09.2019 by Smt. Shahjahan against the applicant and one other person namely Nawab alleging therein that her husband had given a Bolero pick-up vehicle of which he was the registered owner on rent in the year 2015 to co-accused Nawab who was having business of milk and milk products. Nawab did not pay the required monthly rent of the same on which he was countered to which he stated that he will give the same collectively. After some days he stated that he would give Rs. 1 lakh 50 thousand. Later on her husband asked him for return of the vehicle. On 22.04.2019 he came to know that the vehicle is standing in the premises of the applicant who is M.L.A. after which the first informant along with her husband went there to see the vehicle. A phone call was received by the husband of the first informant from the applicant who threatened them and told them to go back. They were also abused and threatened for life and even threat was extended that they would be got involved in false cases. Her husband due to fear went to Police Station Kotwali after which the Inspector in-charge was sent to the place where the vehicle was standing and then again a threatening call was received and there were abuses received by the first informant and the threat of life was extended due to which her husband suffered heart attack after which he was taken to the doctor and from there he was referred to higher centre. Next day, she received a call from the police station that the vehicle has been brought from the place of its standing and the same may be taken back by her. The rent due on it be given to her. Nawab is a man of bad antecedents and is a relative of the applicant who is M.L.A. On his saying only the applicant had called up the husband of the first informant and threatened him. The first information report has thus been lodged.

Learned counsel for the applicant argued that the incident is a petty offence and even otherwise as per the prosecution case, the vehicle was given on rent to co-accused Nawab. The applicant was not entrusted with the vehicle. The applicant

was not responsible for paying the rent of the vehicle. It is argued that although the applicant is stated to be having criminal history of 17 cases but the said cases are petty cases and are cases only because of the reason that he is an active politician. Paragraph 24 of the affidavit has been placed before the Court. The offences are triable by Magistrate. It is next argued that the parties have entered into a compromise which was drawn on 25.10.2021 between them and filed before the Additional District & Sessions Judge (F.T.C.) / M.P.M.L.A., Shamli at Kairana, the copy of the same is annexed as Annexure-10 to the affidavit. Learned counsel has further argued that during the pendency of investigation the applicant was granted stay of arrest till filing of police report under Section 173 (2) Cr.P.C. vide order dated 24.10.2019 passed in Criminal Misc. Writ Petition No. 23030 of 2019 (Navab and another Vs. State of U.P. and 3 Others), the copy of the order is annexed as Annexure-1 to the supplementary counter affidavit dated 23.05.2022 filed on behalf of the State. It is argued that even in the said writ petition, the factum of compromise was considered which was filed therein and the concerned Court had passed an order in favour of the petitioners therein. It is argued that charge-sheet in the matter has been submitted and as such there are no chances of the applicant not co-operating with the investigation or tampering with the evidence. It is further argued that the applicant is ill. Second supplementary affidavit has been placed before the Court for the same. It is argued that as such the applicant deserves to be released on bail. The applicant is in jail since 29.01.2022.

Per contra, learned counsel for the State vehemently opposed the prayer for bail and argued that there is an audio recording of the threat extended by the applicant to the first informant and her husband of which an audio recording was provided by them which finds reference in the general diary also and the same is mentioned in paragraph 05 of the counter affidavit. It is argued that Sub-Inspector Ajay Kasana got the vehicle recovered from the premises of the applicant and as such it cannot be said that the applicant had no concern with the said vehicle. The copy of the statement of Sub-Inspector has been placed before the Court which is annexed as Annexure-4 to the affidavit. Further learned counsel has placed Annexure-11 to the affidavit being the order-sheet of the trial court from 03.03.2021 to 22.11.2021 and has argued that the applicant had been avoiding appearance in the Court in spite of service of summons which has been mentioned in the order dated 03.03.2021. The summons were served at his place to his persons and after that the summons were again sent which was refused to be received by his family members. It is argued thatailable warrants were issued against the applicant and even then he failed to appear before the trial court. Learned counsel has further argued that vide order dated 25.10.2021 passed by the trial court the said compromise was rejected. Learned counsel has fairly conceded to the fact that although audio recording is part of the general diary but there is no relevant certificate under the Evidence Act for the same. It is argued while placing paragraph 9 of the supplementary counter affidavit that even in other cases against the applicant, the applicant had been avoiding appearance before the concerned Courts. It is argued that in the present case also there are good chances of the applicant not co-operating with the trial, absconding and tampering with evidence and threatening the witnesses in spite

of the fact that he is a public representative. It is argued that the applicant has criminal history of 17 cases against him. In so far as the argument of medical illness is concerned, learned counsel has argued that as per his instructions when the applicant was taken into custody and produced before the jail authorities, he did not complain of any such illness but it was only at a later stage ground of illness has cropped up and the same has been taken in the present bail application for the first time.

After having heard the learned counsel for the parties and perusing the record, it is evident that although as per the prosecution case, the vehicle in question was not given to the applicant by the first informant and her husband, it was given to co-accused Nawab for being used by him and rent was decided to be paid by him. The said vehicle was although recovered from the premises of the applicant. The applicant has criminal history of 17 cases. The order-sheet of the trial court, the copy of which is annexed as Annexure-11 to the affidavit shows that in spite of service of summons on 03.03.2021, the applicant kept on avoiding appearance before the trial court. It was only when he was arrested in another case he was then taken on remand in this case on 29.01.2022. The charge-sheet in the present case, the the copy of which is annexed as Annexure-8 to the affidavit shows that the first informant / Smt. Shahjahan and Ummedrav her husband are the witnesses of the case and then there are 05 other formal witnesses.

In these circumstances, as of now, looking to the criminal history of the applicant and the order-sheet of the trial court which shows the abscondence of the applicant and the apprehension of the applicant not co-operating in the trial and their being an apprehension of his tampering with evidence and threatening the witnesses, this Court is not inclined to release the applicant on bail. The applicant may renew his prayer of bail after the evidence of first informant and her husband has been recorded by the trial court in the present case. The Apex Court in the case of *Deepak Yadav Vs. State of U.P. and Another* vide judgement dated 20.05.2022 passed in Criminal Appeal No. 861 of 2022 has held that the possibility of the accused absconding, likelihood of misuse of bail and interference or attempt to interfere with the course of justice and even evasion or attempt to avoid the due process of law has to be considered. The Apex Court cancelled the bail of the said accused as granted by the High Court considering even the criminal history of two cases, one proceedings under Section 110G and 02 beat informations.

Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is **rejected**.

Order Date :- 6.7.2022

AS Rathore

(Samit Gopal,J.)