

Court No. - 79

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11036 of 2024

Applicant :- Maya Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Kirti Chaurasia, Man Bahadur Singh, Sarvjeet Kumar, Suresh Chandra Pandey, Vikrant Pandey

Counsel for Opposite Party :- Akhilesh Kumar Tiwari, G.A., Jitendra Kumar Maurya

Hon'ble Arun Kumar Singh Deshwal, J.

1. Counter affidavit filed today by the first informant is taken on record.
2. Second supplementary affidavit filed today by the applicant is also taken on record.
3. Heard Sri Saurabh Pandey, learned counsel holding brief of Sri Suresh Chandra Pandey, learned counsel for the applicant; Sri Akhilesh Kumar Tiwari, learned counsel for the first informant as well as Sri Pankaj Saxena, learned AGA for the State and perused the material placed on record.
4. The instant bail application has been filed on behalf of the applicant - **Maya Tiwari** with a prayer to release her on bail in **Case Crime No. -0234 of 2023, under Sections -406, 420, 419, 467, 468, 471, & 120-B I.P.C., Section-66-D of I.T. Act, Police Station - Sarai Khwaja, District - Jaunpur**, during pendency of trial.
5. Contention of learned counsel for the applicant is that as per the allegation in the FIR as well as statement of first informant, amount about Rs.10,00,000/- was transferred in the account of the applicant as well as her husband and daughter, but major part of that amount, amounting to Rs.8,70,000/- had already been transferred in the account of the first

informant. It is further submitted that though in the agreement between the applicant and the first informant, total amount of four cheques is about Rs.5,20,500/- but the applicant has transferred more amount than the amount of cheque. It is further submitted that applicant was herself cheated by co-accused Santosh Kumar Semwal, who during investigation was found to be main accused and who had prepared the forged work order alleged to be issued from PMO and sent to the Whatsapp number of the applicant which applicant bonafidely forwarded to the first informant. Further, it has been submitted that applicant is a lady and she has been in jail since 12.10.2023 and in support of his contention, applicant has submitted that the Apex Court in the case of **Manish Sisodia Vs Directorate of Enforcement** reported in **2024 SCC OnLine SC 1920** observed that object of bail is to secure the attendance of prisoner at trial and the bail is not to be withheld as a punishment. Lastly, it has been submitted that the co-accused Santosh Kumar Semwal, Abhishek Tiwari and Brijesh Srivastava, have already been released on bail by this Hon'ble Court, therefore, she is also entitled to be released on bail.

6. However, learned counsel for the opposite party no.2 as well as learned AGA have vehemently opposed the prayer and submitted that it is undisputed that the forged work order was sent from the Whatsapp number of the applicant and amount of Rs.10,00,000/- was transferred in her account as well as in the account of her husband and her daughter and she misrepresented the applicant as Higher Officer in PMO. It is further submitted that if the applicant was duped by co-accused Santosh Kumar Semwal then the applicant should have filed police complaint against him.

7. Considering the rival submission of parties and on perusal of record, it appears that an amount of about Rs.8,70,000/- has already been transferred in the account of first informant prior to lodging the FIR and in the agreement entered into between the applicant and the first informant,

the amount of cheque is only Rs.5,20,500/- against which the applicant transferred more than Rs.8,70,000/- in the account of first informant.

8. The Apex Court in the case of **GudiKanti Narasimhulu Vs. Public Prosecutor, High Court of Andhra Pradesh** reported in **1971 (1) SCC 240** had observed that bail is not to be withheld as a punishment as the requirement of bail is merely to secure the attendance of prisoners at trial. The Apex Court again in the case of **Nikesh Tara Chand Shah Vs. Union of India reported in (2018) 11 SCC 1** observed in paragraph no.19 that purpose of object to bail is to secure the attendance of the accused at the trial and the proper test to apply in the solution of the question whether a bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is undisputed that the bail is not to be withheld as a punishment.

9. The innocence of a person, accused of an offence, is presumed through a legal fiction, pressing the onus on the prosecution to prove the guilt before the court and presumption of innocence has been acknowledged throughout the world. The Apex court also observed in the number of cases that bail is rule and jail is exception. The Apex Court again in the case of **Sanjay Chandra Vs. Central Bureau of Investigation** reported in **2012 (1) SCC 40** observed that courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. It is further observed by the Apex Court, apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before the conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of the former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. Article 14(2) of the International Covenant on

Civil & Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights, 1948 also acknowledges the presumption of innocence, as a cardinal principle of law until the person is proven guilty. Paragraph nos.21, 22 and 23 of the **Sanjay Chandra's case (supra)** is being quoted as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

10. In India, it has been consistent stand of the court regarding presumption of innocence being the facet of Article 21 of the Constitution of India. Both in the Australia and Canada, *prima facie* right to a reasonable bail is recognized based on the gravity of offence. In United States, it is a common practice for bail to be a cash deposit. In the United Kingdom, the bail is more likely to consist of a set of restriction though in India there is no specific Act providing the bail but in UK there is specific Act known as Bail Act, 1976. It also provides bail as a matter of right except under certain cases. Relevant extract of Section 4 of Bail Act, 1976 of United Kingdom is being quoted as under:

“4. General right to bail of accused persons and others.

(1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.

(2) This section applies to a person who is accused of an offence when-

(a) he appears or is brought before a magistrates' court or the Crown Court in the course of or in connection with proceedings for the offence, or
(b) he applies to a court for bail [or for a variation of the conditions of bail] in connection with the proceedings.
This subsection does not apply as respects proceedings on or after a person's conviction of the offence"

11. The Apex Court in **Satender Kumar Antil vs Central Bureau of Investigation and another**, reported in **(2022) 10 SCC 51** has also observed that bail is rule and jail is exception. Paragraph nos. 18, 19 and 20 of **Satender Kumar Antil's case (supra)** is being quoted as under:

"18. We may only state that notwithstanding the special provisions in many of the countries world-over governing the consideration for enlargement on bail, courts have always interpreted them on the accepted principle of presumption of innocence and held in favour of the accused.

19. The position in India is no different. It has been the consistent stand of the courts, including this Court, that presumption of innocence, being a facet of Article 21, shall inure to the benefit of the accused. Resultantly burden is placed on the prosecution to prove the charges to the court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable doubt.

"An uncontrolled power is the natural enemy of freedom."

—Harold Laski in "Liberty in the Modern State"

20. The Code of Criminal Procedure, despite being a procedural law, is enacted on the inviolable right enshrined under Articles 21 and 22 of the Constitution of India. The provisions governing clearly exhibited the aforesaid intendment of Parliament."

12. The Apex Court again reiterated in **Jalaluddin Khan Vs. Union of India in Criminal Appeal No.3173 of 2024** that bail is a rule and jail is exception is also applicable in the cases where act itself provides stringent conditions for grant of bail. Paragraph no.21 of the aforesaid judgment is being quoted as under:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail

in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."

13. In another judgement of Apex Court in **Manish Sisodia Vs Directorate of Enforcement (supra)** again observed that keeping a person in jail during a trial over a period of time is not proper and while keeping a person in a trial for long time, the court has forgotten very well settled principles of law that bail is not to be withheld as a punishment. Paragraph no.53 of the aforesaid judgement is being quoted as under:

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception."

14. From perusal of above legal position, it is clear, while considering the bail application then apart from seriousness of the charges and severity of punishment, paramount consideration should be given to whether there are chances of absconding or tampering with the witnesses or intimidation to victim or witnesses on the part of the accused. The bail application of an unconvicted person should not be rejected for the purpose of giving him a taste of imprisonment as a lesson or as a mark of disapproval of his conduct.

15. Reverting to the present case, there is no averment from prosecution's side that there are chances of absconding or tampering with the witnesses or intimidation of victim or witnesses on the part of the applicant who is a lady and she is also in jail since 12.10.2023 and till date charge has not been framed and there is no likelihood for early conclusion of trial and co-accused persons have already been granted bail by this court. In such circumstances, refusing the bail will amount to travesty of justice and will also be in violation of Article 21 of the Constitution of India.

16. In view of the above, without expressing any detail opinion on the merit of the case, court is of the view that applicant is entitled to be released on bail.

17. Let the applicant- **Maya Tiwari** involved in the aforementioned crime be released on bail, on her furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

i. The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

ii. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

18. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

19. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 23.10.2024

S.Chaurasia