

AFR

Reserved on: 18.10.2024

Delivered on: 12.11.2024

Court No. - 33

(1) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1538 of 2023

Applicant :- Nandan Singh Bisht

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Vaibhav Kalia, Vidhu Bhushan Kalia

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

CONNECTED With

(2) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14110 of 2022

Applicant :- Latif Alias Kale

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Salil Kumar Srivastava

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

AND

(3) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14113 of 2022

Applicant :- Satyam Tripathi Alias Satya Prakash Tripathi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Salil Kumar Srivastava

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

AND

(4) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14164 of 2022

Applicant :- Shekhar Bharti

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home , Lko.

Counsel for Applicant :- Salil Kumar Srivastava

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

AND

(5) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1575 of 2023

Applicant :- Dharmendra Singh Banjara

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A., Vivek Kumar Rai

AND

(6) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1640 of 2023

Applicant :- Ashish Pandey

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

AND

(7) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1920 of 2023

Applicant :- Rinkoo Rana

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

AND

(8) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 1998 of 2023

Applicant :- Ullas Kumar Trivedi Alias Mohit Trivedi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A., Ajai Kumar, Vivek Kumar Rai

AND

(9) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11541 of 2022

Applicant :- Ankit Das

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home

Counsel for Applicant :- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Opposite Party :- G.A.

AND

(10) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 2066 of 2023

Applicant :- Lavkush

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A.,Ajai Kumar,Vivek Kumar Rai

AND

(11) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 2090 of 2023

Applicant :- Sumit Jaisawal

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A.

AND

(12) **Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 2316 of 2023

Applicant :- Shishupal

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.

Counsel for Applicant :- Manish Mani Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. The case has been heard through Video Conferencing from Allahabad.

2. Heard Sri Vaibhav Kalia (in bail no.1538/2023), Sri Salil Kumar Srivastava (in bail nos.11541/2022, 14110/2022, 14113/2022 & 14164/2022), Sri Manish Mani Sharma (in bail nos.1575/2023, 1640/2023, 1920/2023, 1998/2023, 2066/2023, 2090/2023 & 2316/2023), learned counsels for the applicants and Sri Ajai Kumar, Sri Vivek Kumar Rai, learned counsels for the informant as well as Ms. Parul Kant, learned A.G.A. for the State and perused the record.

First Bail Applications Moved On Behalf Of The Applicants:-

3. Applicant- Nandan Singh Bisht went to jail on 19.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 302, 120-B, 34, 427 IPC, Section 30 of Arms Act and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.

4. Applicant- Latif alias Kale went to jail on 13.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 302, 120-B, 307, 326/34, 427/34 IPC, Section 30 of Arms Act and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.
5. Applicant- Satyam Tripathi alias Satya Prakash Tripathi went to jail on 19.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 302, 120-B, 307, 326/34, 427/34 IPC, Section 30 of Arms Act and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.
6. Applicant- Shekhar Bharti went to jail on 12.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 302, 120-B, 307, 326/34, 427/34 IPC, Section 30 Arms Act and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.
7. Applicant- Dharmendra Singh Banjara went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B, 427 IPC and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.
8. Applicant- Ashish Pandey went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B, 427 IPC and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.
9. Applicant- Rinkoo Rana went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B, 427 IPC and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.
10. Applicant- Ullas Kumar Trivedi @ Mohit Trivedi went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B, 427 IPC and Section 177 of Motor Vehicle Act, Police Station- Tikuniya, District- Lakhimpur Kheri.

Second Bail Applications Moved On Behalf Of The Applicant:-

11. Applicant- Ankit Das, went to jail on 13.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 302, 120-B, 307, 326/34, 427 IPC, Section 30 of Arms Act and Section 177 of Motor Vehicles Act, Police Station- Tikuniya, District- Lakhimpur Kheri.

12. Applicant- Lavkush, went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B & 427 of IPC and Section 177 of Motor Vehicles Act, Police Station- Tikuniya, District- Lakhimpur Kheri.

13. Applicant- Sumit Jaisawal went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B, 427 of IPC, Sections 3/25 & 3/27 of Arms Act and Section 177 of Motor Vehicles Act, Police Station- Tikuniya, District- Lakhimpur Kheri.

14. Applicant- Shishupal went to jail on 18.10.2021 in Case Crime No.0219 of 2021, under Sections 147, 148, 149, 307, 326, 34, 302, 120-B, 427 of IPC and Section 177 of Motor Vehicles Act, Police Station- Tikuniya, District- Lakhimpur Kheri.

15. First bail applications of above mentioned four applicants, namely, Ankit Das, Lavkush, Sumit Jaisawal and Shishupal were rejected by a common order dated 09.05.2022 passed by the coordinate Bench of this Court in Criminal Misc. Bail Application No. 2986 of 2022.

16. In the instant application, the applicants, namely, Nandan Singh Bisht, Latif alias Kale, Satyam Tripathi alias Satya Prakash Tripathi, Shekhar Bharti, Ashish Pandey, Rinkoo Rana, Ankit Das and Sumit Jaisawal were granted interim bail by a common order dated 14.02.2023 passed by the coordinate Bench of this Court.

17. So far as the other applicants, namely, Dharmendra Singh Banjara, Ullas Kumar Trivedi @ Mohit Trivedi and Lavkush are concerned, interim bail were granted to them vide orders dated 28.02.2023 passed in

respective bail applications. The applicant, namely, Shishupal was granted interim bail vide order dated 20.03.2023.

18. Since all the aforesaid bail applications are relating to the same crime (FIR), therefore, they are being disposed of by a common order.

PROSECUTION STORY:

19. As per FIR, named accused Ashish Mishra @ Monu in his Thar Mahindra vehicle followed by two other vehicles, came to the place of incident at a high speed and killed the farmers by firing at them indiscriminately.

20. On the written complaint of Jagjeet Singh s/o Hari Singh, the F.I.R. was lodged with the allegations that on 3rd October, 2021, farmers and labours of the local area were protesting peacefully at Agrasen Inter College Play Ground, Tikuniya, Kheri for showing the black flag to State Home Minister, Government of India, Mr. Ajay Mishra 'Teny' and Deputy Chief Minister Mr. Keshav Prasad Maurya, Government of U.P. It is further alleged in the F.I.R. that at about 3 p.m., accused Ashish Mishra @ Monu reached on the spot with 3-4 vehicles (four wheelers) along with 15-20 unknown persons armed with weapons. Ashish Mishra @ Monu, who was sitting on the left side in the Thar Mahindra vehicle, started firing and the vehicle, which was moving ahead at a high speed, crushed the crowd. Further allegation made in the F.I.R. is that due to firearm injury, one Gurvinder Singh s/o Sukhvinder Singh died on the spot. Thereafter, the two vehicles including the vehicle of accused Ashish Mishra @ Monu overturned in the side ditch of the road, as a result, some pedestrians also received injuries. Thereafter, Ashish Mishra @ Monu ran away from the spot by taking the cover of his firing. In the said incident, four farmers died, namely, (i) Gurvinder Singh s/o Sukhvinder Singh r/o Motronia, Nanpara, (ii) Daljeet Singh s/o Hari Singh r/o Village Banjara Tanda, Nanpara, (iii) Nakshatra Singh s/o Sukkha Singh r/o Village Nandapurva Dhaurahara, Tehsil Kheri and (iv) Lavpreet Singh s/o Satnam Singh r/o Chaukhadafarm Palia Kalan, Kheri.

ARGUMENTS ON BEHALF OF APPLICANT:

21. The applicants are not named in the FIR. The names of the applicants have come up later on during the course of investigation in the statement of eye-witnesses.
22. There is a cross-version to the instant case which was registered as FIR No.220 of 2021 by accused Sumit Jaiswal with the allegations that it were the protestors who had attacked them and committed murder of Hari Om Mishra, Shubham Mishra and Shyam Sundar and grievously injured three others.
23. The postmortem report of the deceased persons from the side of accused persons, namely, Hari Om Mishra, Shubham Mishra and Shyam Sundar, categorically indicates that the cause of death was antemortem injuries received by hard and blunt object, as such they were beaten to death by the farmers.
24. The FIR does not mention the fact of aforesaid murder of three persons in the instant FIR No.219 of 2021. The absence of mentioning the factum of murder of three persons and injuring equal number of persons from the side of applicants goes against the prosecution story.
25. It is true that four persons from the side of informant have lost their lives coupled by the fact that an independent person who was a journalist has also been put to death in the instant case, but it is an admitted fact that three persons from the side of applicants have also died, as such, at this point of time it cannot be ascertained as to which party was the aggressor one.
26. The prosecution has not come with clean hands as the case was later on modified from being that of gunshot injuries to that of injuries caused due to crushing by vehicles. It is possible that the driver might have panicked due to rage of the public at large. The case is of mob lynching and there was so hue and cry at the place of occurrence that there was no chance of anybody hearing the accused Ashish Mishra @ Monu

saying "*teach them a lesson*", as such, their statements cannot be relied upon. No overt act has been assigned individually to the applicants.

27. One Punto car from the side of applicants was also ransacked by the protestors with an ulterior motive which shows their defiance of law and also the fact that it has not been explained as to how the said car was damaged.

28. The provisions of Section 144 Cr.P.C. were applicable to both the parties, as such, the procession of farmers cannot be termed to be peaceful.

29. The FIR was instituted under several sections along with sections 279, 338 and 304-A I.P.C., but the said sections have been deleted later on by the Investigating Agency with the permission of C.J.M. concerned, which implies that the vehicles were being driven at a normal speed.

30. The trial is moving at a snail's pace as out of a list of 114 witnesses, only *seven* have been examined so far. There is no likelihood of conclusion of trial in near future. The fundamental rights of the applicants enshrined under Article 21 of the Constitution of India stand violated as the applicants were incarcerated in jail for more than one year.

31. The defence is not required to prove its version beyond reasonable doubt but has to adduce evidence which has to be seen by the Courts on preponderance and probabilities. Thus, there is every possibility that the driver of the vehicles might have panicked and crashed, thereby causing death of four persons from the side of protesters and a journalist.

32. Much reliance has been made on the bail order of the main accused person Ashish Misha @ Monu who was earlier on enlarged on interim bail by the Supreme Court and the same order was made absolute vide order dated 22.7.2024¹, which reads as under:-

"1. The petitioner was granted interim regular bail vide an order dated 25.01.2023 subject to various conditions including that he shall

1 SLP (Criminal) No(s). 7857 of 2022

not stay in the State of Uttar Pradesh or in NCT of Delhi during the period of interim bail. Other usual conditions were also imposed upon the petitioner. Subsequently, the condition of not staying in NCT of Delhi was relaxed vide an order dated 26.09.2023 taking into consideration the ailment of the petitioner's mother and the fact that he was also required to get his daughter operated in Delhi.

2. During the course of hearing, it is stated by Mr. Siddharth Dave, learned Senior Counsel for the petitioner that there is a change of circumstances since the petitioner's father is no longer an elected Member of Parliament or a Minister in the Union Government. There is no residential accommodation available to the petitioner or his family to stay in Delhi. He, accordingly, seeks further modification of the condition imposed in the order dated 25.01.2023.

3. We have heard Mr. Prashant Bhushan, learned counsel for the complainant/farmers with reference to the prayer made by the petitioner.

4. Taking into consideration all the attending circumstances, the interim bail granted to the petitioner vide order dated 25.01.2023 is made absolute subject to the following conditions:

(i) The petitioner is permitted to stay either in NCT of Delhi or in Lucknow city in the State of Uttar Pradesh.

(ii) The petitioner shall, however, abide by the terms and conditions imposed vide order dated 25.01.2023 and shall be entitled to go to the place where the trial is pending a day prior to the date fixed in the trial case.

5. Similarly, the interim bail granted to Guruwinder Singh, S/o Gurmej Singh; Kamaljeet Singh, S/o Iqbal Singh, Gurupreet Singh, S/o Kulwinder Singh and Vichitra Singh, S/o Lakhwinder Singh, in FIR No.220 of 2021 is also made absolute.

6. Adverting to the main case, we are informed by Ms. Garima Prashad, Sr. Additional Advocate General for the State of U.P. that out of 114 witnesses, 7 have been examined so far. In our considered view, the trial proceedings are required to be expedited. This can only be ensured provided that (i) the Trial Court fixes a schedule for conducting the trial; (ii) the witnesses to be examined on the fixed date are identified in advance; (iii) necessary directions are issued to the prosecution/State Authorities to ensure the presence of those witnesses; and (iv) counsel for the parties extend full cooperation to the trial in examining/cross-examining the witnesses.

7. We, accordingly, direct the learned Trial Court to fix a schedule, keeping in view the pendency of other important or time-bound matters in the said Court, however, prioritising the subject trial. The Public Prosecutor shall inform the Trial Court the number of witnesses (five witnesses or so for one day), who shall be produced on the date fixed. The State Authorities shall also ensure their presence before the Trial Court on the date fixed. Counsel for the petitioner or those representing other co-accused shall extend full cooperation to the Trial Court in this regard.

8. *The Trial Court shall send a Status Report to this Court before the next date of hearing.*

9. *Post the matter for hearing on 30.09.2024.”*

33. Thus, there is no likelihood of the conclusion of trial in near future, as such the applicants are entitled for bail.

34. The applicants have right of private defence as contemplated under Section 97/103 I.P.C. as three persons from the side of applicants have also been put to death and three others have sustained grievous injuries.

35. No test identification parade was conducted as per the provisions of Section 9 of the Indian Evidence Act, thus nominating the accused persons is politically motivated.

36. The applicants have not misused the interim bail granted earlier on, as such, there is no likelihood of them misusing the bail and are not at all a “*flight risk*”.

ARGUMENTS ON BEHALF OF OPPOSITE PARTY:

37. The bail application has been opposed on the ground that five innocent persons have been put to death by the applicants and named accused person Ashish Mishra @ Monu. The eye-witnesses have nominated the applicants, as such they are not entitled for bail.

38. It is not disputed that criminal history of the applicants has been explained.

ARGUMENTS ON BEHALF OF STATE:

39. Learned A.G.A. has also opposed the bail application on the ground that the argument advanced on behalf of applicants that no one sustained any gunshot injury carries no weight as the informant is not an eye-witness to the incident. It is settled law established by the Supreme Court that FIR is not an encyclopedia of events. The applicants have been identified by all the other eye-witnesses.

40. The fact that the criminal history of the applicants has been explained and also that they have not misused the liberty of bail is also not disputed.

CASE LAW:

41. The Full Bench of Supreme Court in the case of ***Upkar Singh vs. Ved Prakash & others***² has observed in paragraphs 23 & 24 as follows:

"23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to books. This cannot be the purport of the Code.

24. We have already noticed that in the T.T. Antony case this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible."

42. The Supreme Court in the case of ***Union of India vs. K.A. Najeeb***³ has observed as under:-

"We are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail."

43. The Supreme Court in ***Padam Singh vs. State of U.P.***⁴ has held:

"5.when the prosecution does not explain the injury sustained by the accused at about the time of the occurrence or in the course of occurrence, the court can draw the inference that the prosecution has suppressed the genesis and origin of the occurrence and has thus, not presented the true version. It is also well settled that where the evidence consists of interested or inimical witnesses, then, non-

2 (2004) 13 SCC 292

3 AIR 2021 SC 712

4 (2000) 1 SCC 621

explanation of the injury on the accused by the prosecution assume greater importance....."

44. The Supreme Court in ***Vijayee Singh vs. State of U.P.***⁵ has held:

10. It was further observed that:

"... in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

45. This Court in the case of ***Nanha S/o Nabhan Kha vs. State of U.P.***⁶ has observed as follows:

"60. As regards the second part of the referred question whether it is duty of the co-accused to disclose in his bail application the fact that on an earlier occasion the bail application of another co-accused in the same case has been rejected. The prior rejection of the bail application of one of the accused cannot preclude the court from granting bail to another accused whose case has not been considered at the earlier occasion. The accused who comes up with the prayer for bail and who had no opportunity of being heard or placing material before the Court at the time when the bail of another accused was heard and rejected, cannot be prejudiced in any other manner by such rejection."

46. In the case of ***Sanjay Chandra vs. Central Bureau of Investigation***⁷, the Supreme Court has held:

"18. In his reply, Shri. Jethmalani would submit that as the presumption of innocence is the privilege of every accused, there is also a presumption that the appellants would not tamper with the witnesses if they are enlarged on bail, especially in the facts of the case, where the appellants have cooperated with the investigation. In recapitulating his submissions, the learned senior counsel contended that there are two principles for the grant of bail - firstly, if there is no prima facie case, and secondly, even if there is a prima facie case, if there is no reasonable apprehension of tampering with the witnesses or evidence or absconding from the trial, the accused are entitled to

5 (1990) 3 SCC 190

6 (1992) SCC OnLine All 871

7 (2012) 1 SCC 40

grant of bail pending trial. He would submit that since both the conditions are satisfied in this case, the appellants should be granted bail.

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47. In the case of ***Satender Kumar Antil vs. Central Bureau of Investigation and another***⁸, the Supreme Court has laid down as follows:

“94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

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“98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.”

48. The Supreme Court in its judgment passed in ***Indrani Pratim Mukerjea vs. Central Bureau of Investigation and Another***⁹ has granted bail to the accused as the trial was unlikely to be concluded in near future due to huge witnesses remaining to be testified. The same view has been expressed by the Supreme Court in the judgment of ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and Another***¹⁰.

49. Vide its judgment dated 19.3.1996 passed in ***R.D. Upadhyay vs. State of A.P. and Others***¹¹ taking into consideration the right to speedy trial of the accused, the under trials languishing in several jails were ordered to be released who were incarcerated for a period of one year or more.

50. The principle that bail is the rule and jail an exception has been emphasised in the judgment of the Supreme Court passed in ***Nikesh***

8 2022 INSC 690

9 (2022) SCC OnLine SC 695

10 2024 SCC OnLine SC 1693

11 (1996) 3 SCC 422

Tarachand Shah vs. Union of India¹². The relevant paragraphs are being reproduced as follows:

19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465], the purpose of granting bail is set out with great felicity as follows: (SCC pp. 586-88, paras 27-30)

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476 : 1924 Cri LJ 732] , AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the “Meerut Conspiracy cases” observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504 : 1932 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356 : 1931 Cri LJ 1271], AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. State [Gudikanti Narasimhulu v. State, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

'1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.'

29. *In Gurcharan Singh v. State (UT of Delhi) [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the Court, that: (SCC p. 129, para 29)*

'29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.'

30. *In American Jurisprudence (2nd, Vol. 8, p. 806, para 39), it is stated:*

'Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.'

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

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24. *Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248].*

51. Reiterating the aforesaid view the Supreme Court in the case of ***Manish Sisodia Vs. Directorate of Enforcement***¹³ has again emphasised that the very well-settled principle of law that bail is not to be withheld as

a punishment is not to be forgotten. It is high time that the Courts should recognize the principle that “*bail is a rule and jail is an exception*”.

52. In the case of *Prabhakar Tewari Vs. State of U.P. and another*¹⁴, the Supreme Court has observed that pendency of several criminal cases against an accused by itself cannot be a basis for refusal of bail.

CONCLUSION:

53. In so far as criminal antecedents of the applicants are concerned, it is not the case of the State that applicants might tamper with or otherwise adversely influence the investigation, or that they might intimidate witnesses before or during the trial. The State has also not placed any material that applicants in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicants just on the ground of criminal antecedent. The instant case falls within the parameters of *Prabhakar Tiwari (supra)*.

54. It is an admitted fact that both the parties did not observe restraint, which led to unfortunate death of eight persons. As per the arguments tendered by both the parties, five persons (four farmers and one journalist) from the side of the first informant/victim are said to have died in the incident, and three persons are said to have been put to death from the side of the applicant. In addition to it, 13 persons sustained injuries from the side of informant and 3 from the side of applicant.

55. 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 or the counsel for informant.

56. In light of the circumstances and the following considerations:

- (i). There is cross-version to the present case, acknowledged by both parties;
- (ii). The Supreme Court has made absolute the interim bail granted to four accused persons in the cross-version;
- (iii) The main accused, Ashish Mishra @ Monu, named in the F.I.R., was granted bail by the Supreme Court on 22.07.2024. The applicants' case is at a better footing than his, as they were not named in the F.I.R.;
- (iv) A significant number of witnesses remain to be examined, and there is no likelihood that the trial will conclude in the near future;
- (v) There is no indication that the applicants have misused the interim bail previously granted;
- (vi) The applicants' antecedents have been sufficiently explained.

The Court finds it to be a fit case for bail. Accordingly, the bail applications are hereby *allowed*.

57. Let the applicants- **Nandan Singh Bisht, Latif Alias Kale, Satyam Tripathi Alias Satya Prakash Tripathi, Shekhar Bharti, Dharmendra Singh Banjara, Ashish Pandey, Rinkoo Rana, Ullas Kumar Trivedi Alias Mohit Trivedi, Ankit Das, Lavkush, Sumit Jaisawal and Shishupal** involved in aforementioned case crime number 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 following conditions.

- (i) The applicants shall not tamper with evidence.

(ii) The applicants shall remain present, in person, before the Trial Court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicants is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against them in accordance with law.

58. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicants and sureties be verified by the court concerned before the bonds are accepted.

59. It is made clear that observations made in granting bail to the applicants shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 12.11.2024

Vikas/-

(Justice Krishan Pahal)