

Court No. - 82

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14612 of 2025

Applicant :- Zafar Ali

Opposite Party :- State of U.P.

Counsel for Applicant :- Irshad Ahmad,Prakhar Saran
Srivastava,Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.
2. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Irshad Ahmad, learned counsel for the applicant and Sri Rupak Chaubey, learned A.G.A. for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.335 of 2024, under Sections 191(2), 191(3), 190, 221, 132, 125, 324(5), 196, 223-B, 326(F), 230, 231 B.N.S. and Sections 3/4 Public Property Damage Prevention Act, Police Station Sambhal, District Sambhal, during pendency of the trial in the court below.
4. FIR of the present case was lodged against co-accused Zia-Ur-Rahman Barq, Suhail Iqbal and 700-800 unknown persons and as per the allegation, during pendency of the civil suit, Advocate Commission was issued and on 24.11.2024 when Commission arrived for survey of a mosque situated at Sambhal district then nominated accused persons along with 700-800 unknown persons created hurdle in survey and started making agitation and on their instigation, mob damaged the public property including police

vehicles.

5. Learned Senior Counsel appearing on behalf of the applicant submits that applicant is the Chairman of Sambhal Jama Masjid Committee and during investigation without any cogent evidence, he has been made accused in the present matter.

6. He further submits that Investigating Officer gave notice to the applicant, under Section 179 B.N.S.S. and on 23.03.2025 when applicant appeared before the Investigating Officer pursuant to the notice dated 23.03.2025 then after recording his statement, he was arrested and was made accused in the present matter.

7. He further submits that FIR of the present case was lodged for the offences punishable with maximum punishment of seven years but during investigation, offences under Sections 230, 231 B.N.S. have also been added in which maximum punishment is life imprisonment but offences under Sections 230, 231 B.N.S. are not made out against the applicant, as there is no cogent evidence against him that he either giving or fabricating false evidence with intent to procure conviction of capital offence.

8. He further submits that actually in the month of March, 2025 in district Sambal suddenly violence erupted and agitations started and in one of such incidents, four persons died and with regard to the incidents including incident of murder other FIRs were lodged and in none of the FIR applicant was named as accused but being Chairman of Sambhal Jama Masjid Committee when he started making allegations against the police personnel that they were responsible for the death of the innocent people then due to this reason, he has been roped in the present matter.

9. He further submits that there is no evidence that applicant participated in the alleged agitation dated 24.11.2024 and he has been made accused merely because he was Chairman of Sambhal Jama Masjid Committee however as per prosecution, he was present at the time of incident.

10. He further submits that merely on above basis, presumption has been drawn against the applicant by the authorities concerned that he was instrumental in the alleged agitation dated 24.11.2024.

11. He further submits that from the FIR, it reflects that co-accused Zia-Ur-Rahman Barq was the principal accused, who was leading the mob but when he challenged the FIR of the present case before this Court then on 03.01.2025 Division Bench of this Court in Criminal Misc. Writ Petition No.23614 of 2024 disposed off his writ petition in the light of the observation made by the Apex Court in the case of ***Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273*** and pursuant to the order passed by Division Bench of this Court during investigation, he has not been arrested.

12. He further submits that however, apart from the present case applicant was having previous criminal history of two other cases but his criminal history has been duly explained in the instant bail application and both the cases relate to minor offences.

13. He further submits that applicant is respectable person of the society and he was Chairman of Sambhal Jama Masjid Committee and he is in jail in the present matter since 23.03.2025 i.e. for last four months.

14. Per contra; learned A.G.A. vehemently opposed the prayer for bail and submits that being Chairman of Sambhal Jama Masjid

Committee applicant was instrumental for the violent agitation of the mob dated 24.11.2024 but he could not dispute the fact that applicant was not named in the FIR and there is no evidence, which can suggest that he also participated in the alleged incident dated 24.11.2024. He however, further submits, as he was present at spot and he had earlier conversation with the principal accused, therefore, he has been made accused in the present matter.

15. He further could not dispute the fact that although during investigation, offences under Sections 230, 231 B.N.S. have also been added but there is no admissible and cogent evidence in this regard against the applicant on record and he has been made accused in these offences only because he in press conference made accusation against police personnel for death of four people.

16. He however, further submits that earlier in two cases applicant has also been made accused but could not dispute the fact that both the cases relate to minor offenses.

17. He further could not dispute the fact that investigation of the case has already been concluded and charge-sheet has been filed and applicant is in jail in the present matter since 23.03.2025 i.e. for last four months.

18. I have heard both the parties and perused the material available on record.

19. However, as per FIR, under the leadership of co-accused Zia-Ur-Rahman Barq mob damaged the public property including police vehicles and also created obstruction in survey of a mosque, which was being done on the direction issued by the civil court but it reflects, applicant was not named in the FIR. It appears, as he

was Chairman of Sambhal Jama Masjid Committee, therefore, as per prosecution, he was instrumental for the agitation and thus, during investigation, he has been made accused in the present matter but from the record, it could not be reflected that he also participated in the alleged incident dated 24.11.2024.

20. Further, from page no.116 of the paper book, it reflects, on 23.03.2025 a notice was issued to the applicant by I.O. of the case under Section 179 B.N.S.S. and when he appeared then he was arrested and he was made accused and this fact shows bona-fide on the part of the applicant.

21. Further, co-accused Zia-Ur-Rahman Barq appears to be principal accused and when he challenged the FIR of the present case before Division Bench of this Court in Criminal Misc. Writ Petition No.23614 of 2024 then Division Bench of this Court on 03.01.2025 was pleased to dispose off his writ petition in the light of the observation made by the Apex Court in the case of ***Arnesh Kumar (supra)*** as all the offences till date were punishable with maximum punishment of seven years and pursuant to the order passed by Division Bench of this Court during investigation, he was not arrested.

22. Further, however, it reflects, during investigation, after the order passed by the Division Bench of this Court in the writ petition filed by co-accused Zia-Ur-Rahman Barq, offences under Sections 230, 231 B.N.S. have also been added, which were punishable with maximum punishment of life imprisonment but it reflects, except bald and verbal allegation, there is no admissible evidence against the applicant with regard to the offences under Sections 230, 231 B.N.S., as during the course of argument, learned A.G.A. could not place any material on the basis of which,

this Court can infer that applicant prima-facie appears to have been committed the offences under Sections 230, 231 B.N.S.

23. Further, in the FIR along with the co-accused, Suhail Iqbal was also made accused but during investigation, his involvement was found false and final report has been submitted in his favour.

24. Further, however, apart from the present case applicant is also having criminal history of two other cases but his criminal history has been duly explained in the instant bail application and both the cases relate to minor offenses.

25. Further, applicant is in jail in the present matter since is in jail in the present matte since 23.03.2025 i.e. for last four months and charge-sheet has already been filed against him.

26. Further, law is settled, unless proven guilty, an accused is deemed to be innocent and his bail application should not be dismissed for punitive purpose.

27. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

28. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

29. Let the applicant- **Zafar Ali** be released on bail in the aforesaid case on 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 appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make 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 any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

30. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

31. 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 :- 24.7.2025
Zafar