Court No. - 87

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10996 of 2020

Applicant :- Ramu Mallah
Opposite Party :- State of U.P.
Counsel for Applicant :- Vivek Sharma,Abhishek Mayank,Hirdesh Kumar Yadav,Shashank Kumar,Sushma Yadav,Vinod Kumar Yadav
Counsel for Opposite Party :- G.A.,Ratnendu Kumar Singh

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Hirdesh Kumar Yadav, learned counsel for the accused-applicant and Sri Ratnendu Kumar Singh, the learned Additional Government Advocate for the State and perused the record.

2. The present bail application under Section 439 Cr.P.C. has been filed with a prayer to grant bail to the accused applicant in Sessions Trial No. 130 of 2010, arising out of Case Crime No. 399 of 20, under Sections- 147, 148, 149, 302, 120B, 34 I.P.C. and Section 7 of the Criminal Law Amendment Act and Sections 25/27 of the Arms Act, Police Station- Dakshin Tola, District- Mau.

3. The accused applicant is a dreaded criminal and member of most dreaded criminal gang of India i.e. gang of Mukhtar Ansari. The accused applicant is facing several criminal cases of heinous offences. The detail of criminal cases registered against the accused applicant has been mentioned in the Counter Affidavit filed on behalf of the State to oppose the present bail application, which is extracted hereinbelow:

Criminal History of accused-Ramu Mallah S/o Kashi, resident of Mohalla Sikandarpur, Police Station – Kotwali, District - Ghazipur				
Sl. No.	**Case Crime Number**	**Sections**	**Police Station**	**District**
1	662/90	399, 402 IPC	Kotwali	Ghazipur
2	664/90	25 Arms Act	Kotwali	Ghazipur
3	44/91	302, 506 IPC	Kotwali	Ghazipur
4	713/94	307, 302 IPC	Kotwali	Ghazipur
5	378/94	3(1) Gunda Act	Kotwali	Ghazipur
6	552/95	3(1)4(2) U.P. Gangster Act	Kotwali	Ghazipur
7	891/10	3(1) U.P. Gangster Act	Dakshin Tola	Mau
8	399/10	302, 307, 120B, 34 IPC and 7 of CLA Act	Dakshin Tola	Mau

4. In the present case in which the accused applicant is seeking bail, besides him, Mukhtar Ansari and others are accused. Strangely, a co-ordinate bench of this Court enlarged such a criminal on bail in such a henious offence of murder vide order dated 08.05.2013 passed in Criminal Misc. Bail Application No. 34580 of 2011 [Ramu Mallah Vs. State of U.P.]. The order dated 08.05.2013 is extracted hereinbelow:

> "The present bail application has been moved on behalf of the accused-applicant for enlarging him on bail in Case Crime No.399 of 2010, under Sections 147, 148, 149, 307, 302, 120B IPC and Section 7 Criminal Law Amendment Act, P.S. Dakshin Tola, District Mau.
>
> "Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
>
> The counsel for the applicant has submitted that the applicant is not named in the FIR; that in the statement of so-called eye witness Shabbir Shah @ Raja, the name of one Sahab Mallah resident of near Devkali Pump, P.S. Saidpur, District Ghazipur, came into light but during investigation it came to the knowledge of the Investigating Officer that Sahab Mallah son of Babu Lal resident of Devkali near Pump, P.S. Saidpur, District Ghazipur was in jail in some other case at the time of the occurrence in question, so in the second statement of witness Chandra Shekhar recorded on 7.4.2010 it was said that Ramu Mallah is sometimes called by the name of Sahab Mallah and he heard the name of Sahab Mallah and he had committed mistake, thus initially in the statement of the witnesses some another person, namely, Sahab Mallah was made the accused in this case but when it came to the knowledge of the Investigating Officer that Sahab Mallh was in jail at the time of the occurrence in question, the applicant Ramu

> Mallah was falsely involved in the crime in question without holding any test identification parade and that the applicant is in jail since 22.7.2010, so he should be enlarged on bail.
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> Learned A.G.A. has opposed the prayer for bail.
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> Considering all the facts and circumstances of the matter and the submissions of the counsel for the applicant, I find it proper to enlarge the accused applicant on bail.
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> The bail application is accordingly allowed.
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> Let the accused applicant, namely, Ramu Mallah involved in the above case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned."

5. This Court while rejecting the application of Sri Mukhtar Ansari, a co-accused, who had filed Criminal Misc. Bail Application No. 50145 of 2020 and seeking bail in the present case vide order dated 06.08.2018 expedited the trial of the case and directed the trial court to conclude the same preferably within a period of three months from the date of production of certified copy of that order with a further observation that if there was no legal impediment.

6. Thereafter, in a second bail application being Criminal Misc. Bail Application No. 1966 of 2019 [Mukhtar Ansari Vs. State of U.P.] seeking bail in crime in question; this Court vide order dated 09.05.2019 again dismissed the said application of the co-accused in the following terms:

> "On 08.03.2019 this Court directed the Special Judge, MP/MLA Court, Allahabad to close the opportunity of defence witnesses if they fail to appear on the next date i.e., 30.03.2019, and proceed with the hearing of the case without granting any further adjournment. The case was directed to be listed on 04.04.2019.
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> On 04.04.2019 Sri M. C. Chaturvedi, learned Additional Advocate General for the State, informed that the Trial Court has fixed 11.04.2019 as the date for hearing of the case and case was directed to be listed on 16.04.2019.
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> However, it appears that the case was not taken up on 16.04.2019 and was taken-up on 22.04.2019 when this Court was informed that 30.04.2019 is the date fixed for hearing and accordingly this bail application was directed to be listed on 06.05.2019. Today i.e., 06.05.2019, certified copy of the order of the Trial Court has been produced, which shows that as per the order dated 08.03.2019 of this Court the arguments of the prosecution were heard on 30.04.2019 and 21.05.2019 is fixed for further

> arguments. From further perusal of the order dated 30.04.2019 of the Trial Court, it appears that co-accuseds, Anuj Kanojia, Ramu Mallah and Ram Dularey did not appeared before the Trial Court on that date and therefore, non bailable warrants have been issued against them.
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> …
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> Learned counsels for the State have submitted that the Trial Court is seized with the hearing of trial and therefore, no useful purpose would be served by allowing the bail application of the applicant at this stage. Applicant will still remain in jail, even if the bail is granted, due to his implication in several other cases.
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> Considering the fact that the Trial Court is proceeding with the hearing of the case and there is no impediment to the same, except absconding of some co-accuseds who may delay the conclusion of trial of the applicant, it is hereby directed that the trial court shall proceed with the hearing of the Sessions Trial of the applicant being ST No.130 of 2010 along with connected Sessions trials. In case co-accuseds do not co-operate, the trial of the applicant shall be separated and concluded within a period of two months from the date of production of certified copy of this order.
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> Subject to the aforesaid directions, the second bail application of the applicant is rejected."

7. After this Court expedited the trial and directed for its early conclusion, as a matter of strategy, the accused applicant absconded. Non-bailable warrants remained unserved and when the proceedings under Section 82/83 Cr.P.C. were undertaken against the accused applicant, it was found that the address given by the accused applicant was false address and he was never residing at the said address.

8. Learned A.G.A. has taken specific objection in the Counter Affidavit dated 20.01.2022 filed in response to the supplementary affidavit dated 19.12.2020 filed on behalf of the accused-applicant and submitted that the present accused applicant was not residing on the address which was shown in the police, trial court records i.e. bail application, non-bailable warrants and bail bonds. He was not residing on the said address for the last 8-10 years. He had again mentioned the same address before this Court which has been found to be false and incorrect. The documents got prepared by him i.e. Voter Identity Card and Certificate issued by the Village Pradhan dated 03.12.2020, were verified and was found that the certificate issued by the Village Pradhan dated 03.12.2020 was a forged one. The concerned police of

the police station made a G.D. entry dated 19.11.2021 stating therein that the present accused applicant was not the resident of Village Chakpahad (Mahroopur), Post Mohammadabad, District Ghazipur, the address given in the application in the bail applied for which the Village Pradhan allegedly issued the certificate. Thus, the accused applicant has not only strategically absconded the trial but also played fraud with the Court by giving false and incorrect address on the bail application/supplementary affidavit on behalf of the accused applicant and submitted forged certificate of Village Pradhan. In most of cases, the accused applicant has been acquitted as no one would dare to depose against such dreaded criminal. The witnesses either got wonover or made tired or eliminated. Learned A.G.A. submits that the accused applicant could secure the acquittal as the witnesses turned hostile. This is disturbing and perturbing phenomena and such dreaded criminal go scot free in several heinous offences inasmuch as dreaded criminals either winover the witness or make them tired or eliminate them.

9. For a sound, robust, free & fair criminal justice system, free, frank and fearless deposition of witnesses is of utmost importance. Free and fair trial and preservation of rule of law, is not possible, if the State does not give witnesses protection and support for their free, frank and fearless deposition. In India, it has been witnessed that because of threats to life, reputation, property of witnesses or family members or their harassment or intimidation by or on behalf of the accused, the witnesses turn hostile and accused go scot free.

10. The Supreme Court in the case of ***Mahender Chawla and Others Vs. Union of India and Others*** reported in ***(2019) 14 SCC 615***, has observed that over the last many years, criminal justice system in this country has been witnessing traumatic experience where the witnesses turn hostile, particularly, in those cases where the accused person/criminals are tried for henious offences or where the accused persons are influential person or in dominating position. These accused make attempt to induce or intimidate the witnesses because of which the witnesses avoid coming Court or refrain from truthful deposition. The witnesses are reluctant to depose against

people with muscle power, money power or political power, which has become the order of the day. Supreme Court has said that the witnesses are eyes and ears of justice, and if ultimately a truth is to be arrived at, they have to be protected so that interest of justice do not incapacitated in the sense of making the proceedings before the Court mere mock trials.

11. In ***State Vs. Sanjeev Nanda*** reported in ***(2012) 8 SCC 450*** after analyzing various cases, the Supreme Court listed following reasons which make witnesses detracting from statements before the Court and turn hostile: (i) threat/intimidation; (ii) Inducement by various means; (iii) Use of muscle and money power by the accused; (iv) Use of stock witnesses by protracted trial; (v) hassles faced by the witnesses during investigation and trial (vi) non-existence of any clear cut legislation to check hostility of witnesses.

12. Once the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even the hardened criminals escape the conviction. Acquittal of a criminal in henious offences shakes the public confidence in criminal justice delivery system.

13. Supreme Court in ***Mahendra Chawla (supra)*** has given the following directions/guidelines for witnesses' protection in paragraphs 12.1 to 14.6, which would read as under:

> "**12.1** The Judges shall allow the use of a videotaped interview of the testimony of the child in the presence of a child-support person.
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> **12.2** A child could be permitted to testify through closed circuit television or from behind a screen to acquire an honest and frank account of the acts complained of without any fear.
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> **12.3** Only the Judge should be allowed to cross-examine a minor on the basis of the questions given by the defence in writing after the examination of the minor.
>
> **12.4** During the testimony of the child, sufficient interval should be provided as and when she requires it.
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> **13.** In some other judgments, this Court gave some more guidelines, in the following manner:
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> **13.1** Sections 354 and 377 of the Penal code should *be tried and inquired on the same principles mentioned under sub-section (2) of Section 327 CrPC.*
>
> **13.2** While holding the trial of rape or child sex abuse, some sort of arrangements like a screen or something like it may be used so as to

> make sure that victim or witnesses (who are equally vulnerable and need protection like the victim) do not confront the accused.
>
> **13.3** Questions raised during the cross-examination by the counsel of the accused that are directly related to and be reminiscent to the victim or the witnesses of the incident should be written down and given to the Presiding Officer of the court in advance. The Presiding Officer must put forth those questions to the victim or witness in simple and clear language and as far as possible without making her uncomfortable.
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> **14.** It hardly needs to be emphasised that failure to hear material witness is denial of fair trial. The practice, however, to give protection to the witnesses is based on *ad hocism* i.e on case-to-case basis. The courts have also, in the process, adopted different means to ensure witness protection, which can be stated in brief detail:
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> **14.1** Publication of evidence of the witness only during the course of trial and not after.
>
> **14.2** Re-trial allowed due to apprehension and threat to the life of witness.
>
> **14.3** Necessity of anonymity for victims in cases of rape.
>
> **14.4** Discouraging the practice of obtaining adjournments in cases when witness is present and accused is absent.
>
> **14.5** Making threatening of witnesses as a ground for cancellation of bail.
>
> **14.6** ***Cross-examination by videoconferencing*****—**This is one of the innovative methods devised, which is specifically helpful to the victims of sexual crimes, particularly, child witnesses who are victims of crime as well."

14. Merely since the accused has been acquitted as the witnesses have turned hostile in some of the cases, his criminal history, does not get evaporated. Such a criminal, if allowed to come out of jail, he would certainly be in a position to influence the witnesses and free, fair and truthful deposition of the witnesses, would be an impossible. Therefore, I find no substance in the submission of the learned counsel for the accused applicant that since the accused applicant has secured acquittal, he should be enlarged on bail.

15. Thus, the present application is ***hereby rejected***.

Order Date :- 1.3.2023
Arun K. Singh