

(1989) 12 AHC CK 0014

In the Allahabad High Court

Case No : Criminal Misc. Bail Application No. 7727 of 1989

Ganesh Babo Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-12-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 445

Penal Code, 1860 (IPC) — Section 120B, 406, 407, 420, 467

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 190

Citation : (1990) 1 AWC 198

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Advocate : A.D. Giri, Shashi Kant Agarwal and Veeresh Misra, for the Appellant;

Judgement

S.I. Jafri, J.—This application for bail on behalf of Ganesh Babu Gupta, applicant traces its origin from Case Crime No. 100 of 1989 in which the applicant was indicted of Sections 420/467/468/471/482, 120-B IPC P.S. Gwaltoli Kanpur Nagar.

2. Before coming to brass-tacks, I would like to delineate certain preliminaries of the case which bears upon the merit of the facts of the instant case. Applicant Ganesh Babu Gupta, being the Managing Director of M/s. G.B. Laboratories Limited, having its registered office at 7/203-A, Sarup Nagar, Kanpur and being engaged in manufacturing of drugs and pharmaceuticals including life saving drugs, applied for loan and he was disbursed a sum of Rs. 14.90 lacs by the U.P. Financial Corporation, Kanpur as against Plot No. 334/1 of which a mortgage deed was executed by the applicant. The plot which was mortgaged to the U.P. Financial Corporation against the loan of the aforesaid amount, was situated in village Jamhu, Pergana and Tahsil Oraiyya District Etawah. The deed of mortgage was executed on 2-6-1977 in favour of U.P. Financial Corporation by the applicant in the capacity of the owner of the aforesaid plot.

3. Lateron, the U.P. Financial Corporation challenged the aforesaid. document(mortgage deed) as being fictitious and forged alleging that no title of

the plot, passed on to the applicant. The facts as set out by the prosecution are that the applicant Ganesh Babu Gupta liaised with the village Pradhan, namely, Vijay Bahadur Singh and one Vidya Ram of the village, where the plot situated, to realise his object of cheating the aforesaid corporation. Initially, the said plot had been allotted to one Manna Lal, Harijan resident of the aforesaid village Jamhu being landless under the orders of Sub-Divisional Officer out of the Gaon Sabha land. Manna Lal, however, died intestate and consequently the plot came to vest in the State of U.P. It was at this stage that Vidya Ram got his name mutated in the revenue records over the said plot employing dubious means vis-a-vis the fact that he was not an heir of the aforesaid Manna Lal, as taking into account the provisions contemplated u/s 190 of UP ZA and LR Act the right, title or interest of the deceased, got extinguished in the said plot after his death. It is further alleged that in view of the aforesaid provisions, Vidya Ram could not become Sirdar of the land and also, he could not acquire Bhumidhari rights even after deposit of 20 times rent. It is further alleged that Vidya Ram executed sale deed in favour of Vijai Bahadur regarding the said plot who in view of the aforesaid facts and circumstances could not acquire any right on account of transfer of the aforesaid plot in his favour by Vidya Ram and hence the transfer of the said plot in favour of Vijai Bahadur was also void abinitio.

4. As soon as fraud trickled to the notice of U.P. Financial Corporation, a report of the offence was made by Sri. S.K. Srivastava, Deputy Chief Law Manager on 20-4-1989 at 4.30 P.M. at P.S. Gwaltoli Kanpur Nagar and on the basis of the aforesaid report, a Chik Report was prepared and a case u/s 420/467/468/472/482/120B IPC was registered at Crime No. 100 of 1989, in the General Diary of the aforesaid Police Station against applicant Ganesh Babu Gupta, Vidya ,Ram and Vijai Bahadur Singh Pradhan. An investigation into the allegations followed by, CB, CID (E.O.W.) and CB, CID after investigation, submitted charge-sheet against the applicant and others.

5. The broad facts urged in the report are that the aforesaid plot belonged to one Manna Lal resident of the village Jamuha, Dibiapur, Distt. Etawah, who died intestate and consequently, the land came to vest in the state of U.P. Co-accused Vidya Ram was not the heir of deceased Manna Lal but he managed to get his name transmuted over the said plot and by depositing twenty times of rent, he sought to acquire Bhumidhari frights over the said plot and thereafter he executed the sala deed of the aforesaid plot in favour of co-accused Vijai Bahadur Singh, though the sale deed did not confer any right, title on co-accused Vijai Bahadur Singh in order to execute sale deed in favour of the applicant who had mortgaged the said plot against the loan of Rs. 14.90 lacs, While canvassing his case strenuously, Sri. Girish Chandra Saxena, the learned Counsel for the complaintant submitted that in case the applicant is admitted to bail, the possibility cannot be negated that he would try to immigrate from India in order to secure himself against the clutches of law and to fortify this contention, the learned Counsel submitted that the applicant possesses passport bearing No. 783723 dated 1-9-1989. It was further brought to the notice of this Court by the

learned Counsel that over and above this amount of Rs. 14.90 lacs which is involved in the instant case the applicant has also windled the aforesaid corporation by deceitful means worth over Rs. 60 lacs in case crime No. 60 of 86 in which applicant is indicted of the offence u/s 420/407 IPC of P.S. Kaka Deo, District Kanpur Nagar. It, is worthwhile to advert to the fact that in the aforesaid case the applicant has been admitted to bail by the Metropolitan Magistrate, Kanpur on technical grounds u/s 167 Code of Criminal Procedure. However, the charge sheet has been submitted against the accused by the CB CID (Economic Offences Wing) Lucknow. The learned Counsel further submitted that a third case was also registered against the applicant u/s 420/468/467/471/482/120B IPC at Police Station Gwaltoli District Kanpur in which charge-sheet by CB CID (Economic Offences Wing) Lucknow, after investigation, has also been filed in the Court. In the aforesaid case, the amount involved is to the tune of Rs. 9.12 lacs.

6. I have heard Sri. A.D. Giri, learned Counsel for the applicant, who pointed out that the aforesaid amount of Rs. 14.90 lacs was loaned to the applicant after the title of the applicant over plot No 334/1 had been thoroughly examined by the officers of the Corporation and under the circumstances, no offence of cheating can be attributed to the applicant, inasmuch as the applicant was under a bonafide belief that Vijai Bahadur Singh, Pradhan of the aforesaid village was the real owner of the said plot and it was under this belief that the applicant had purchased the plot from him and executed the mortgage deed in favour of corporation.

7. I have bestowed my considered thoughts to the fact and circumstances of the case and upon a conspectus, I feel that it may be that it was bonafide belief on the part of the applicant that influenced the applicant that influenced the applicant to purchase the plot in dispute and execute the mortgage deed in favour of the corporation against the loan of Rs. 14.90 lacs obtained from the corporation and further that the officers of the corporation had gone the whole hog in examining and scanning the title of the applicant over the plot and it was after thorough scrutiny and examination of the title that the Corporation was satisfied to advance loan to the applicant and hence there are circumstances which tend to mitigate the severity of offence against the applicant.

8. The learned Counsel for the complainant having read the mind of the Court that the Court leans in favour of releasing the applicant on bail, submitted that if the Court thinks it fit to admit the applicant to bail in that event, his release on bail be subjected to his filing bank security to the extent of the amount involved in the case and also sureties of higher amount in order to secure the amount loaned and obtained by the applicant. Another submission of the learned Counsel for the complainant is that the applicant be also called upon to surrender his passport to the Court. To prop up his above contention, the learned Counsel for the complainant placed before me a copy of the order passed in Bail Application No. 293 of 1986 Hassan Waheed v. Suhail Ahmad vide case Crime No. 57/86 u/s 406/420 IPC, P.S. Anwar Ganj District Kanpur. In the aforesaid case, the amount

involved was to the tune of Rs. 3 lacs and while admitting the applicant in the aforesaid case to bail, the Court of Sessions Judge Kanpur imposed the following conditions for the grant of bail:

1. The applicant shall execute a personal bond for a sum of Rs. 25,000 and furnish two sureties each in the like amount to the satisfaction of the magistrate concerned.
2. He shall surrender his passport as well as visa before the Court below.
3. He shall also submit a Bank guarantee for a sum of Rs. three lacs.
4. All these conditions shall be fulfilled prior to the release of the applicant on bail. The applicant shall continue to be enlarged on bail if the above conditions are fulfilled. He shall however not leave the country without prior permission of the Magistrate concerned.

Dissatisfied with the aforesaid order stipulating conditions for the release of applicant on bail, Hassan Waheed moved the High Court by means of an application vide Misc. Application No. 7267 of 1986 and the High Court was pleased to allow the application to the extent that the imposition of condition in furnishing bank guarantee by the accused to the tune of Rs. 3 lacs was set aside. Now it was the turn of complainant Suhel Ahmad for being dissatisfied with the order of High Court and hence he moved the Hon''ble Supreme Court against the order of High Court dated 9-3-1986 thereby waiving the condition as imposed by the Court below. Special leave to appeal was granted by Hon''ble Supreme Court and Hon''ble Supreme Court finally disposed of the appeal of the complainant thereby setting aside the order of High Court in which the High Court was pleased to waive the conditions imposed by the Court below and further justifying the Bank guarantee as imposed by the Court below but at the same time, the Hon''ble Court was pleased to reduce the Bank guarantee from Rs. 3 lacs to Rs. 1.50 lacs vide its order dated 20-10-1986 arising out of SLP (Criminal) No. 1607 of 86, Sohail Ahmad v. Khwaja Hassan Waheed. By propounding the ratio of the aforesaid case, the learned Counsel sought to point up the fact that the Hon''ble Supreme Court has upheld the condition of imposing Bank guarantee in such cases to be furnished by the accused. The underlying purpose behind imposing the condition for release of the accused on bail, is to ensure attendance of the accused during the course of trial. In this case, what is sought by calling for the imposition of conditions, is to secure the amount embezzled or the amount that the corporation has been cheated of.

9. Here, I would like to underline the fact that the provisions under the Code of Criminal Procedure do not stipulate imposing of any such conditions such as calling upon the accused person to furnish Bank Security in lieu of his release on bail. The relevant provision in this context is given u/s 445 of Code of Criminal Procedure which too speaks of only to the extent of permitting the accused to deposit sum of money or Government promissory note in lieu of executing surety bonds.

10. It would not be out of context to quip here that the applicant has not refuted the amount of Rs. 14.90 lacs having been disbursed to him. The aforesaid amount, must have swelled up to Rs. 28 lacs or more by now-inclusive of interest thereon and in this view of the matter as well as upon a conspectus of the facts and circumstances discussed above, I think it a fit case to release the applicant on bail subject to his furnishing two sureties of Rs. 8 lacs each and personal bond in the like amount to the satisfaction of C.M.M. Kanpur. It is also provided that the applicant shall also give an undertaking in the aforesaid Court that he would not leave the country without prior permission of the Court. The applicant has filed an affidavit dated 29-8-89 annexing therewith a copy of the Certificate from Passport Officer Lucknow mentioning therein that Passport No. C-783723 dated 1-9-88 issued in the name of the applicant has been received back in the office. In view of the fact that the applicant has deposited the passport with the Passport Officer at Lucknow, the Passport Officer Lucknow is directed to refrain from returning the passport aforesaid or any new passport to the applicant without prior permission of the Court of Chief Metropolitan Magistrate, Kanpur Nagar.

11. Here I would like to observe that in cases of the nature in which public money has been embezzled or any public Institution has been cheated of public money, the Court must take into account the extent of the amount embezzled or cheated and must secure such amount against such guarantee or bonds which the Court may deem fit and proper while granting bail to the applicant-accused bearing in mind that the amount involved is public money which the accused has not denied to have been disbursed to him. The purpose underlying such measure is that in case the applicant immigrates after his release from Jail, the public money involved would be recoverable from such sureties or guarantees. I do feel that heavy sureties to be imposed in such cases may appear to be excessive and may defeat the benefit of bail in the event of accused's failure to furnish such heavy sureties but the Courts must see the other side of the coin as well where the public money is exposed to the risk of being irrecoverable from the accused which the accused has not refuted having been disbursed to him. Here in the instant case, the applicant appears to be a man of means and he can easily afford to furnish such sureties as is imposed below.

12. Let applicant Ganesh Babu Gupta, involved in case Crime No. 100 of 1989 u/s 420/467/468/471/482/120-B IPC, P.S. Gwaltoli Kanpur Nagar, be released on bail on his furnishing personal bond of Rs. 8 lacs and two sureties in the like amount to the satisfaction of C.M.M. Kanpur Nagar.

13. Subject to the aforesaid directions contained in the body of the order, this application is disposed of accordingly.