

(2006) 08 AHC CK 0116

In the Allahabad High Court

Case No : Civil Misc. Bail Application No. 7753 of 2006

Tauseef Ahmad @ Tauseem (In Jail)

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437(1), 439, 439(1), 82, 83
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2006) 08 AHC CK 0116

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Ravi Kiran Jain, V.P. Srivastava, S.M. Iqbal Hasan and Lav Srivastava, for the Appellant; Viresh Mishra, Amit Misra, Raj Kumar Khanna, Braham Singh and Sushil Kumar Tewari and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—This bail application has been filed by Tauseef Ahmad @ Tauseem in Case Crime No, 328 of 2004, u/s 302, 307, 34 IPC, P.S. Asmoli, district Moradabad.

2. Encapsulated facts in the thumbnail description are registered thus. Amar Singh Verma (informant) on 12.6.2004 had gone to his village Madala Fatepur from Moradabad on vacation, In the night intervening between 12/13 ,6,2004 he alongwith his siblings elder brother Vijay Singh and two younger brothers Rajveer Singh and Aman Singh alongwith nephew Sumit Kumar were sleeping on their platform on the cot. Sumit Kumar was sleeping on the same cot alongwith Rajveer Singh, In the night at about 1.30 A.M. on 13.6.2004 the three named accused persons Asrat and Asrar both s/o Sharafat Husain and Tauseem s/o Asrat (present applicant) armed with country made pistol came to the said platform (Chabutra) and at the instigation of accused Asrat, accused Asrar shot at Rajveer, younger brother of the informant. The shot hit Sumit Kumar and also caused a gun shot entry wound at the back of Rajveer Singh and an gun shot

exit would through his abdomen. The informant Amar Singh Verma, his brother Vijay Singh and Aman Singh witnessed the incident in the light of a lantern. Accused persons were well known to them as they belonged to the same Mohalla (locality) . On their hue and cry and hearing the gunfire many persons collected on the spot. The present applicant Tauseef Ahmad @ Tauseem also opened fire at Amar Singh Verma (informant) but it did not cause any injury to any body. The accused persons made their escaped good after the incident. The motive of the incident was alleged to be old enmity. As the condition of Rajveer and Sumit Kumar were serious they were carried to the hospital by the patrol police party accompanied by other brothers of informant. Amar Singh Verma, regarding the said incident, lodged a FIR at the police station Asmoli, district Moradabad on 13.6.2004 at 6.15 A.M. vide crime no, 328/04, u/s 307 IPC, which was subsequently converted into 302/34, 307 IPC, as the injured Rajveer Singh lost his life because of the sustained injuries in the said shooting. The post mortem report of Rajveer Singh and injury report of Sumit Kumar, a boy of 10 years indicates that both had sustained firearm wound of injuries.

3. On these facts the present applicant has approached this Court for bail through the above noted bail application after its rejection by both the courts bellows.

4. I have heard Sri V.P. Srivastava learned senior counsel assisted by Sri S.M. Iqbal Hasan, learned Counsel for the applicant on bail prayer of the present applicant and Sri Viresh Mishra, learned senior counsel on behalf of the informant as well as learned AGA in opposition,

5. Sri V.P. Srivastava contended that according to the prosecution case itself the shot fired by the applicant did not cause any injury to any body. He further contended that the local police has investigated the matter and had found the case to be false and the witnesses also said that they did not know that as to who had fired the shot at the deceased and injured and for this submission he invited the attention of the court to the statements of various witnesses including Rajeshwari, Hari Om and others. Learned senior counsel further submitted that according to the statement of these witnesses the first informant was not present at the time of incident. He further submitted that annexure 9 is the statement of Sub Inspector Om Datt Sharma who had taken the injured to Yashoda Nursing Home, for treatment in which he had stated that the informant was not present at the time of the incident and none had disclosed the names of the assailants in his presence and till the arrival of informant from Moradabad no FIR was registered. He further contended that the statement of Vijai Singh Verma eyewitness was recorded after four days. He further contended that at the behest of the informant the investigation was transferred from local police to C.B.C.I.D. Bareilly and it submitted the charge sheet against the applicant on 7.2.2005 under the influence of informant. He further submitted that co-accused Asharaf has already been granted bail by Sessions Judge, Moradabad. On these grounds he prayed that the applicant be also released on bail by this Court.

6. Learned AGA as well as Sri Viresh Mishra learned Counsel for the informant contrarily, though did not dispute the role of the applicant of firing without causing any injury but contended that the conduct of the applicant was such that he does not deserve bail. They contended that in this case, the incident had taken place on 13.6.2004 but all the accused persons absconded and they did not surrender before the court for a very long period of twenty months. So much so that the charge sheet was also submitted against them as absconders. It is pointed out that Asraf co-accused had surrendered on 17.2.2006 and the present applicant had surrendered in the court on 3.2.2006, Learned Counsel for the respondents invited the attention of the court on a letter written on 1.7.2006 for reinvestigation of the matter by C.B.C.I.D. Lucknow. This was at the behest of the accused after the charge sheet was submitted by C.B.C.I.D. Bareilly, Meanwhile four writ petitions and two Criminal Misc. Applications were filed in this Court by either side. It was also submitted that accused persons had also filed a revision challenging the charge sheet, which was dismissed, by this Court. Learned Counsel for the informant respondent relied upon a judgment of the apex court reported in 2005 (4) Cri 58 (SC) State through CBCID v. Amarmani Tripathi. The Learned Counsel for the respondent further contended that a bail cancellation application has been filed in this Court against the granting of bail to the co-accused Asharaf which is pending before this Court.

7. I have considered the submissions canvassed by the contesting rival sides and have gone through the record of the case. Before adverting to the merits of the present case a bird eye view of the considerations relevant for grant of bail during the pendency of the trial.

8. Bail or jail ? has been a subject matter of discussions since many decades now and has yielded in many judicial pronouncements both by this Court as well as by the apex court. Some of the authorities on the subject by the supreme court, relevant for the case at hand, are listed here.

In Gurcharan Singh and Ors. v. State (Delhi Administration) 1978 ACC 86, the apex court while dealing with Sections 437(1) and 439(1) Cr. P. C. (Sections dealing with bail in non bailable offences during the pendency of trial in the lower court) has observed thus:

Since the Sessions Judge or the High Court will be approached by an accused only after a refusal of bail by the Magistrate, it is not possible to hold that the mandate of law of bail under 437 Cr. P. C. for the Magistrate will be ignored by the High Court or by the Session's Judge.

9. Enumerating the relevant considerations for grant of bail it has been held in the same judgment by the apex court that:

The overriding consideration in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr. P. C. of the new code are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the accused with reference

to the victims and the witnesses; the likely hood of the accused fleeing from justice; of repeating the offence of jeopardising his own life faced with grim prospect of possible conviction in the case; of tampering with witness; the history of the case as well as of investigation and other relevant grounds which in view of so many variable factors, can not exhaustively set out.

(Emphasis mine)

It has further been held: - "We may repeat the two paramount considerations viz. the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due weight should be bestowed on these two factors apart from others....

10. In *Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh*, Hon'ble V.R. Krishna Iyer J. in respect of grant of bail has held:

It is thus obvious that the nature of the charge is vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the court to be freed for the time being.

(Emphasis Supplied)

11. Recently the apex court in the case of *State through C.B.I. v. Amarmani Tripathi 2005 (4) Cri 58* has reiterated the same principles in para 18 thus:

It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhati Vs. N.C.T. Delhi and Another*, and *Gurcharan Singh v. State (Delhi Administration)* AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to, subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another*,

The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of

evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are;

- a. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- b. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant
- c. Prima facie satisfaction of the court in support of the charge, (see *Ram Govind Upadhyay Vs. Sudarshan Singh and Others*, and *Puran v. Ram Bilas* 2001 (6) SC 338.

This Court also in specific terms held that:

the condition laid down u/s 437(1)(i) is sine qua non for granting bail even u/s 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with the life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

12. Thus from the legal positions as has been enunciated by the apex court referred to above it is clear that the emphasis has always been on the preservation of piousness of investigation and trial procedure and to dissuade the accused from denting it in any way. Thus one of the cardinal principles to be considered at the time of granting bail during the pendency of trial u/s 437(1) and 439(1) Cr.P. C is that the accused has not made any endeavour to tamper with the investigation at any point of time and that he will not do so with evidence and witnesses during the course of trial. Thus the conduct of the accused during the stage of investigation is one of the several relevant factors which has to be taken into consideration while exercising discretion in his favour to enlarge him on bail. The past conduct of the accused is also relevant fact for ensuring fair, unblemished and untainted trial. Any person accused of a non bailable offence forfeits his right to be released on bail who by his conduct during the course of investigation had made efforts to tamper with the evidence and

had tried to influence the investigation for the desired results in his favour. Further any accused who does not believe in the majesty of the court and judicial process does not deserve for discretionary order to be exercised in his favour for grant of bail during the pendency of the trial. In the backdrop of such legal principles that the case of the present applicant is to be examined for grant of bail.

13. From the prosecution allegations, bail application and various affidavits filed in the case it transpires that the prosecution allegations against the applicant are that he alongwith two of his associates committed the murder of Rajveer and caused injury to a boy of 10 years namely Sumit Kumar. The applicant, who had also fired at the time of the incident, was the resident of the same locality as that of the informant and all the witnesses had witnessed the incident in the light of lantern burning at the spot and hence there was no chance of mistaken identity. The applicant had fired shot subsequent to the firing made by the co accused and hence the witnesses must have been attracted by his shot. More over soon after the incident the applicant alongwith co accused absconded. They are alleged to be connected with ruling Samajwadi Party and close to Ram Gopal Yadav MP and Iqbal Mahmood, State Minister in UP Government. The record further reveals that the charge sheet was submitted against them as absconders. It further transpires that the local police did not interrogate the injured for a couple of days and sided with the accused and therefore the investigation was transferred to C.B.C.I.D., Bareilly, who apprehending the tampering of witnesses, got 164 Cr. P. C. statements of at least four of them recorded. They are Amar Singh Verma (Informant), Suresh Kumar @ Chutan (Eye Witness), Rajesh Kumar Mathur (Eye Witness), and Sumit Kumar (Injured). They all have named the applicant as one of the assailants who had fired in the incident. Counter affidavit further reveals that even cognizance of the offence was taken by the C.J.M. on 10.2.2005 against the applicant as an absconder accused and 82-83 Cr. P. C. proceeding was resorted to by the court for his appearance before it. A Local Intelligence Unit Report also indicated that a shadow was provided to the informant, as there was danger to his life. The accused in the crime were not being arrested and therefore this Court had ordered for securing their presence and for complying with the order of arrest passed by the lower court in criminal Misc. applications No. 2510 of 2005. Various orders passed by this Court are appended along with the counter affidavit. It also transpires vide annexure No. 10 to the counter affidavit that even at the stage of investigation, when the accused had not even surrendered, an attempt to withdraw the prosecution vide a letter dated 4.3.2005 written by Special Secretary Govt. Of U.P. was attempted. It has been averred in a number of paragraphs of the counter affidavit (Para 13,18,20) that the accused were threatening the informant and witnesses. It is an admitted fact that the co accused Asraf surrendered in court on 17.2.2006 and the present applicant surrendered in court of 3.2.2006 after a gap of nearly twenty months from the date of the incident and this period was utilized by them to get the investigation tampered and get the prosecution withdrawn. Thus from the facts mentioned

above it is amply clear that if the applicant will be released on bail the trial will not be allowed to proceed and there cannot be a fair trial. Further as this stage it cannot be said that the applicant did not participate in the incident. The local police did not make any attempt to proceed against the accused u/s 82-83 Cr. P. C. and it did not make any serious efforts to get them arrested. It is also apparent that at the instance of the accused the investigation was transferred from C.B.C.I.D., Bareilly after submission of charge sheet by C.B.C.I.D. Bareilly, to C.B.C.I.D. Lucknow and all this was done when the accused were absconding. The accused as absconders had filed writ petition for stay of their arrest and they had been constantly making efforts to get the investigation results in their favour. All this would not have been possible without the help from some high ups. More over it has been informed by the counsel for the informant that against the bail granting order of Session's Judge to the co accused a bail cancellation application has been filed in this Court, which is pending. More over the case of that accused is different from the case of the present applicant. It is also stated at the bar that the applicant are not allowing the charges to be framed and are seeking dates in the Session's Trial. Thus there are ample material on record to show that the applicant accused at every stage had tried to thwart the pious procedure of law besides his role in the crime and therefore I am of the view that his complicity in the crime can not be said to be without any basis and fair trial will not be possible if the applicant is allowed to be released on bail.

14. Resultantly this bail application of the accused applicant Tauseef Ahmad @ Tauseem stands rejected in crime number 328 of 2004, under Sections 302/307/34 IPC, Police station Asmoli, District Moradabad. The trial Judge is directed to expedite the trial and make an endeavor to conclude the same within a period of four months from the date of production of certified copy of this order before it. The office of this Court is directed to send a copy of this order to the trial court within a week from today for its intimation.