

AFR**Court No. - 65****Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 28996 of 2024**Applicant :-** Arman**Opposite Party :-** State of U.P.**Counsel for Applicant :-** Brijesh Kumar Pal**Counsel for Opposite Party :-** G.A.**Hon'ble Ajay Bhanot,J.**

1. Matter is taken up in the revised call.
2. Supplementary affidavit filed by the learned counsel for the applicant is taken in the record.
3. By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No.93 of 2021 at Police Station-Etmadpur, District-Agra under Section 2/3 of the U.P. Gangster Act. The applicant is in jail since 13.09.2020.
4. The bail application of the applicant was rejected by the learned trial court on 09.07.2024.
5. The following arguments made by Shri Ali Jamal Khan, learned amicus curiae on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:
 - I. The applicant has been granted bail in the three criminal cases depicted in the gang chart, namely, (i) Case Crime No.219 of 2020 under Sections 363, 364-A, 302, 201, 34, 120B IPC, P.S. Etmadpur, District-Agra, (ii) Case Crime No.223 of 2020 under Section 307 IPC,

P.S. Etmadpur, District-Agra and (iii) Case Crime No.225 of 2020 under Sections 379, 411, 414, 420, 467, 468, 471 IPC, P.S. Etmadpur, District-Agra.

II. The applicant has explained his criminal history.

III. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to join the trial proceedings. There is no possibility of the applicant influencing witnesses, tampering with the evidence or reoffending.

6. In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

7. Let the applicant-Arman be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

8. The learned trial court is directed to fix the sureties after due application of mind in light of the judgement rendered by this Court in **Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt.**¹

The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not

frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.

9. The District Legal Services Authority (DLSA), Agra shall ensure that appropriate legal aid is made available to the applicant for purposes of submitting sureties and completion of other formalities for being set forth at liberty.

10. Registry is directed to send a copy of this order to the District Legal Services Authority (DLSA), Agra for onward communication to the applicant who is in jail, and for assisting the applicant in the manner stated above.

11. Before parting, the Court would like to notice the other submissions made by Shri Ali Jamal Khan, learned amicus curiae on behalf of the applicant that the applicant has also been imprisoned in the two more criminal cases registered as Case Crime No.226 of 2020 under Section 3/25 of the Arms Act, P.S. Etmadpur, District-Agra and Case Crime No.225 of 2020 under Sections 379, 411 IPC, P.S. Malpura, District-Agra and has been granted bail in the aforesaid cases by the learned trial court. However, he has not been released on bail due to his inability to furnish sureties.

12. This appears to be a serious matter. The large number of the persons who belong to marginalized sections of the society or financially destitute are unable to arrange or provide sureties fixed arbitrarily by the learned trial

courts. To deal with this situation the constitutional Courts have constantly held that the right of bail cannot be defeated by arbitrary surety demands. It is the responsibility of the learned trial court to apply their minds to the socioeconomic status of the accused and accordingly fix the sureties. The law has cautioned against determining sureties in a mechanical manner.

13. This Court, while examining the issue pertaining to failure of accused persons to furnish sureties arbitrarily or mechanically fixed by the learned trial courts in **Arvind Singh (supra)** passed directions are extracted hereinunder:

"24. However despite unequivocal holdings of various constitutional courts the trial courts continue to adopt a rote response to a dynamic problem and approach the issue of fixation of sureties in a mechanical manner and neglect to make requisite enquiries as contemplated in the preceding parts of the judgment. The duties of the trial courts as well as other agencies while fixing sureties can be summed up as under:-

(1) In case a prisoner cannot arrange the sureties fixed by the trial court the former can make an application to the learned trial court for a lesser surety. Material facts relating to the socioeconomic status and roots in the community of the prisoner shall be stated in the application.

(2) Similarly it is bounden duty of the DLSA to examine the status of the prisoners who have been enlarged on bail but are not set at liberty within seven days of the bail order. In case the prisoners cannot arrange for sureties they may be advised and assisted to promptly move an application for refixation of the surety in light of this judgment.

(3) Once the prisoner makes such application the trial court shall make an enquiry consistent with this judgment and pass a reasoned order depicting consideration of relevant criteria for fixing sureties with utmost expedition.

(4) Every trial court is under an obligation to satisfy itself about the socioeconomic conditions of the prisoner and probability of absconding and his roots in the community and fix sureties commensurate with the same. The State authorities or other credible agencies as the court may direct to promptly provide the requisite details.

(5). In case the prisoner is from another State and is unable to produce local sureties, sureties from the prisoner's home district or any other place of his choice determined by the court of competent jurisdiction of the said district and State shall be accepted by the trial court.

(6) The prisoner/counsel may state the details of the socio-economic status of the prisoner in the bail application in the first instance. This will facilitate an expeditious consideration of the issue related to sureties.

26. The right of fundamental liberties of the applicant are being curtailed on account of his poverty and inability to arrange multiple sureties for cases instituted against him.”

14. Further, this Court has also repeatedly directed that the right of bail of the applicant granted by this Court should not be not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.

15. It is noteworthy that this Court in **Arvind Singh (supra)** had directed the District Legal Services Authorities as well as the learned trial courts to examine

the cases of those under trials who are not released on bail despite bail orders in view of onerous sureties demands made by the learned trial courts. The cases were required to be visited regularly by the learned trial courts.

16. As seen earlier this Court in **Arvind Singh (supra)** also directed the District Legal Services Authorities to provide legal aid to prisoners who are not able to enjoy the fruits of liberty granted by bail on account of their failure to provide the sureties fixed by the learned trial courts. The District Legal Services Authorities have to facilitate the said category of prisoners in filing their applications for recall of onerous surety demands.

17. The District Legal Services Authorities and the learned trial courts have not adhered to the aforesaid directions in the facts of this case.

18. The learned District Judge, Agra shall look into the matter and send a report to the Secretary, High Court Legal Services Committee, Allahabad High Court.

19. The Judicial Training and Research Institute (JTTRI), Lucknow, U.P. was also issued directions to sensitize the learned trial courts to the need to apply their minds to relevant facts and the socioeconomic conditions of the accused before determining the sureties in light of this judgement and **Arvind (supra)**.

20. The absence of legal aid to the applicant is also evident from the fact that he could not file this bail application almost one year after he has been enlarged on

bail in all the three cases depicted in the gang chart. The applicant has been in jail since 13.09.2020. The applicant is financially destitute and belongs to a marginalized section of the society. The applicant was able to file the instant first bail application before this Court in the year 2024. The applicant could not approach this Court at an earlier point in time to seek his remedy of bail as he did not have access to legal aid nor was given legal advice to approach this Court earlier and also did not possess resources to file the instant bail application. It is also contended that the directions of this Court in **Anil Gaur @ Sonu @ Sonu Tomar v. State of U.P.**² have been violated. [Also see: **Ramu v. State of U.P.**³

21. The applicant was a victim of "undeserved want" in light of **Anil Gaur (supra)**. The denial of legal aid was caused by failure to implement the directions of this Court in **Anil Gaur (supra)** as well as **Ramu (supra)**.

22. Registry is directed to send a copy of this order to the Secretary, High Court Legal Services Committee, Allahabad High Court as well as the Secretary, Uttar Pradesh State Legal Services Authority, Lucknow to prepare a report regarding compliance of the directions in **Arvind (supra)**.

23. Registry is also directed to send a copy of this order to the Director, Judicial Training and Research Institute (JTRI), Lucknow, U.P. for compliance.

24. This Court appreciates the assistance rendered by

² 2022 SCC Online All 623

³ Criminal Misc. Bail Application No. 17912 of 2019

Shri Ali Jamal Khan, learned amicus curiae, who addressed the Court on the merits of this case, and also made the relevant enquiries into the status of the other bail applications of the applicant where he has been enlarged on bail but he could not set forth at liberty on account of providing sureties.

25. The High Court Legal Services Committee shall consider the payment of usual remuneration to Shri Ali Jamal Khan, (A/A-518/2011) who represented the applicant as amicus curiae before this Court.

26. A copy of this order translated in Hindi shall be provided to the accused in jail through the District Legal Services Authority, Agra.

Order Date :- 30.8.2024

Ashish Tripathi