

**Court No. - 68**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 26295 of 2021

**Applicant :-** Mohd. Jawed

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Syed Hasan Shaukat Abidi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sanjay Kumar Pachori,J.**

Heard Shri Syed Hasan Shaukat Abidi, learned counsel for the applicant, learned A.G.A. for the State and perused the record of the case.

During the course of argument an exemption application has been filed on behalf of the applicant for exempting the filing of certified copy of the F.I.R. as it could not be made available to the applicant due to COVID-19.

The exemption application is allowed.

The filing of certified copy of the F.I.R. is hereby exempted.

The present bail application has been filed on behalf of applicant, **Mohd. Jawed** with a prayer to release him on bail in Case Crime No. 253 of 2021, under Sections 394, 412, IPC, Police Station- Bhojipura, District- Bareilly, during pendency of trial.

It has been submitted by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case on the basis of confessional statement of co-accused Mohammad Shoaib, Mohammad Nabi, Aalim and Aazeem, who were arrested on 29.5.2021 along with Swift Dzire Car No.UP14BP7034. No incriminating article has been recovered from the possession of the applicant. The alleged recovery of country made pistol is made without complying the mandatory provision of Section 100, Cr.P.C. The applicant has been arrested after four days of the incident. First information report has been lodged against the unknown persons. Swift Dzire Car No.UP14BP7034 has been recovered from the joint possession of the other co-accused persons. The applicant has no criminal history. It is next submitted that there is also no possibility of the applicant either fleeing away from the judicial process or tampering with the witnesses. The applicant, who is languishing in jail since 2.6.2021, undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in

the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Per contra learned A.G.A. has opposed the prayer for bail. In case the applicant is released on bail, he will again indulge in similar activities and will misuse the liberty of bail.

It is settled position of law that bail is the rule and committal to jail is an exception in the case of **State of Rajasthan Vs. Balchand @ Baliay (1977) 4 SCC 308**, the Apex Court observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution and opined para 2 "The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative" and considering the facts of the case and keeping in mind, the ratio of the Apex Court's judgment in the case of **Gudikanti Narasimhulu And Ors vs Public Prosecutor, High Court Of Andhra Pradesh, AIR 1978 SC 429**, larger mandate of Article 21 of the constitution of India, the nature of accusations, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of the accused-applicant, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other circumstances, but without expressing any opinion on the merits, I am of the view that it is a fit case for grant of bail.

Let applicant, **Mohd. Jawed** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties of the like amount to the satisfaction of the court concerned with the following conditions-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the petitioner alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

**Order Date :- 16.8.2021**

T. Sinha