



2022 INSC 599



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

I.A. NO.71580 OF 2022

IN/AND

M.A. NO.766 OF 2022

IN

WRIT PETITION (CRIMINAL) NO.39 OF 2022

MOHAMMAD AZAM KHAN

**...APPLICANT/
PETITIONER**

VERSUS

THE STATE OF UTTAR PRADESH

...RESPONDENT

WITH

WRIT PETITION (CRIMINAL) NO.188 OF 2022

ORDER

1. Both the writ petition being Writ Petition (Criminal) No.188 of 2022, as well as the Interlocutory Application No.71580 of 2022 in Miscellaneous Application No.766 of 2022 in Writ Petition (Criminal) No. 39 of 2022 have been filed by the

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GEETA AHUJA
Date: 2022.05.19
14:27:27 IST
Reason: 



petitioner seeking interim bail in Case Crime No.70 of 2020, registered with Police Station Kotwali, Rampur, Uttar Pradesh, for the offences punishable under Sections 420 and 120B of the Indian Penal Code, 1860 (“IPC” for short) [hereinafter referred to as “the said FIR No.70 of 2020”). A direction is also sought directing the respondent to seek prior permission of this Court before arresting the petitioner in any other case. In Writ Petition (Criminal) No.188 of 2022, an additional prayer is also made for quashing and setting aside the proceedings qua the petitioner in the said FIR No.70 of 2020.

2. The facts giving rise to the present matter are as under:

3. The petitioner had filed Writ Petition (Criminal) No.39 of 2022 in this Court on 22nd January, 2022. It was contended in the said writ petition that in all 87 criminal cases/FIRs have been filed against the petitioner. It was further contended that it was only after the present Government came into power in 2017, that 84 out of these 87 criminal cases/FIRs have been filed against the petitioner. It was submitted that as on the



date of filing of the said writ petition, he had secured bail in 84 cases, including 3 cases wherein orders have been passed by this Court. It was the contention of the petitioner that the said criminal cases/FIRs were filed by the Ruling Party with *mala fide* intention. It was further submitted that though in three criminal cases, the bail applications were pending and heard, but were either adjourned or not decided thereby depriving the petitioner of his personal liberty. The said writ petition came up before this Court on 8th February, 2022, when the same was disposed of by the following order:

“This writ petition has been filed for grant of interim bail to the petitioner in the following cases:

(i) Case Crime No.02/2018, dated 25.04.2018 registered under sections 409, 420, 120B, 201 IPC and Section 13(1) of the Prevention of Corruption Act, 1988 at Police Station SIT, Sadar, Lucknow, UP.;

(ii) Case Crime No.79/2019 dated 01.02.2019 under Sections-500, 505 I.P.C. registered at Police Station – Hazratganj, Lucknow, UP; and



(iii) Case Crime No. 312/2019 dated 19.08.2019 under sections 420, 467, 468, 471, 447, 201 & 120-B I.P.C. and Section 3 of The Prevention of Damage to the Public Property Act, 1984 registered at Police Station Azeem Nagar, Rampur, UP.

Mr. Kapil Sibal, learned Senior Counsel appearing for the petitioner submitted that FIRs are registered just before elections and most of them relate to events that occurred long back. The applications filed for bail are being adjourned and the petitioner is suffering in jail due to FIRs registered on false and frivolous grounds.

The petitioner is at liberty to approach the concerned court and request for expeditious disposal of the bail applications.

Needless to mention that the court shall dispose of the bail applications expeditiously.

The writ petition is dismissed. Pending application(s) if any, shall stand disposed of.”

4. It appears that thereafter the petitioner was granted bail in two cases. However, in one case, i.e., pertaining to Case Crime No.312 of 2019, dated 19th August, 2019, for the offences



punishable under Sections 420, 467, 468, 471, 447, 201 & 120B IPC and under Section 3 of the Prevention of Damage to the Public Property Act, 1984, registered at Police Station Azeem Nagar, Rampur, Uttar Pradesh (hereinafter referred to as “the said FIR No.312 of 2019”), though the matter was heard by the learned Single Judge of the High Court on 4th December, 2021 and closed for orders, no orders were passed. Thereafter, an application came to be filed on behalf of the State for bringing out certain developments. On account of this, the said matter got prolonged endlessly, resulting in the matter not being decided and thereby depriving the petitioner of his personal liberty. As such, the petitioner filed Miscellaneous Application No.766 of 2022 in Writ Petition (Criminal) No.39 of 2022 (hereinafter referred to as “the said M.A.”). The petitioner in the said M.A. had prayed for grant of interim bail with regard to the said FIR No.312 of 2019. The said M.A. came to be filed on 23rd April, 2022.



5. It appears that one other FIR No.70 of 2020 was already registered on 18th March, 2020. However, the petitioner was not named in the said FIR No.70 of 2020. A charge-sheet after investigation in the said FIR No.70 of 2020 was filed on 10th September, 2020, wherein the wife of the petitioner and one clerk of the Basic Shiksha Adhikari were arrayed as accused persons. A letter was addressed by the complainant to the Investigating Officer (“I.O.” for short) on 24th April, 2022, stating therein that though the petitioner was also liable to be made accused in the said FIR No.70 of 2020, no action was taken against him.

6. The said M.A. was orally mentioned before this Court on 26th April, 2022 and on 29th April, 2022, seeking listing of the said M.A. On 2nd May, 2022, though the said M.A. was listed, the same could not be taken up and was directed to be listed on 6th May, 2022.

7. It appears that during the pendency of the said M.A., an application was made by I.O. to the Additional Chief Judicial



Magistrate, Rampur on 5th May, 2022, seeking summoning of the petitioner in FIR No. 70 of 2020. The learned Magistrate passed an order summoning the petitioner on the very same day, i.e., on 5th May, 2022 in respect of the said FIR No.70 of 2020.

8. When the said M.A. was listed on 6th May, 2022, it was submitted before this Court by the respondent-State that the judgment had already been reserved by the Allahabad High Court in relation to the bail application in respect of the said FIR No.312 of 2019 and as such, the matter was adjourned to 11th May, 2022.

9. The Additional Chief Judicial Magistrate, Rampur passed an order on 6th May, 2022 and arrayed the petitioner as an accused in FIR No. 70 of 2020 and on the very same day, passed an order remanding the petitioner to custody. Accordingly, the Custody Warrant was issued, directing Sitapur Jail Superintendent to keep the petitioner in custody.



10. In light of the subsequent developments implicating the petitioner in FIR No. 70 of 2020, the present writ petition came to be filed by the petitioner being Writ Petition (Criminal) No.188 of 2022 vide Diary No.14644 of 2022, seeking prayers as stated above. An Interlocutory Application being I.A. No. 71580 of 2022 was also moved in the said M.A. to bring on record these developments and to seek interim bail in respect of FIR No.70 of 2020.

11. During the pendency of these proceedings, the Allahabad High Court, by a detailed order dated 10th May, 2022, granted bail to the petitioner in the said FIR No. 312 of 2019, while imposing severe conditions.

12. We have heard Shri Kapil Sibal, learned Senior Counsel appearing on behalf of the applicant/petitioner and Shri S.V. Raju, learned Additional Solicitor General appearing on behalf of the State of Uttar Pradesh.



13. Shri Kapil Sibal, learned Senior Counsel, submits that from the facts, it is clear that the Ruling Party is making every attempt possible to keep the petitioner behind the bars by implicating him in one FIR after the other. He submits that the present case is a case of political vendetta.

14. Shri Sibal further submits that when the petitioner approached this Court by way of the said M.A. pointing out to this court that though the High Court had heard the bail application concerning the said FIR No.312 of 2019 and reserved the same for orders for number of months, no orders were passed. He submits that anticipating that the petitioner would be granted bail in the said matter, he has been falsely implicated as an accused in FIR No. 70 of 2020. He submits that in the said crime, not only the FIR is registered on 18th March, 2020, but a charge-sheet in the said FIR was also filed long ago, i.e., on 10th September, 2020. It is therefore submitted that the petitioner has been implicated in the said matter only in order to deny him his personal liberty.



15. Shri S.V. Raju, learned Additional Solicitor General, vehemently opposed the application(s)/petition. He submits that under Section 173(8) of the Code of Criminal Procedure, 1973, the Investigating Agency is always free to file a charge-sheet against an additional accused if during the investigation, material is found against him. He submits that the petitioner is a heavy-weight politician and due to his pressure, though he was involved in number of criminal acts, no FIRs were registered against him. It is submitted that the petitioner is a land-grabber and is a habitual offender. He submits that merely because the petitioner is a politician, he cannot be permitted to by-pass the remedy of filing regular bail application before the appropriate Court. Shri Raju further submits that when the petitioner's statement was recorded by the I.O. in respect of FIR No.70 of 2020, he threatened the I.O. with dire consequences. He therefore submits that both the Interlocutory Application as well as the writ petition deserve to be dismissed.



16. In ordinary circumstances, we would not have entertained the present writ petition. The petitioner would have been directed to take recourse to the remedy available to him in law. However, the facts in the present case are very peculiar.

17. The petitioner approached this Court by way of Writ Petition (Criminal) No. 39 of 2022, stating therein that though in 84 FIRs he had already been granted bail, insofar as 3 FIRs are concerned, though the applications for bail were filed, they were either adjourned or heard and no orders were passed. As such, this Court passed the order dated 8th February, 2022 in the said Writ Petition (Criminal) No. 39 of 2022, granting liberty to the petitioner to approach the concerned court and request for expeditious disposal of the bail applications. Though it was sought to be urged before this Court that FIRs were registered just before elections and most of them related to events that occurred long back, this Court had declined to entertain the writ petition and requested the concerned Court to dispose of the bail applications expeditiously.



18. Subsequently, though the petitioner was granted bail in Crime No. 02 of 2018 dated 25th April, 2018, registered at Police Station SIT, Sadar, Lucknow, UP for the offences punishable under Sections 409, 420, 120B, 201 IPC and Section 13(1) of the Prevention of Corruption Act, 1988 and Crime No.79 of 2019, dated 1st February, 2019, registered with Police Station Hazratganj, Lucknow, UP for the offences punishable under Section 500 and 505 IPC, insofar as FIR No.312 of 2019 is concerned, though the Allahabad High Court had closed the Bail Application for orders on 4th December, 2021, no orders were passed. In this background, the petitioner had approached this Court by way of said M.A., praying for interim bail in the said FIR No.312 of 2019. The said M.A. was listed from time to time. When we heard the said M.A. on 6th May, 2022, we simply adjourned it to 11th May, 2022 as it was informed to this Court that the Allahabad High Court was likely to pass the order shortly in the Criminal Misc. Bail Application No. 40580 of 2021 relating to the said FIR No. 312 of 2019. On



the same day, i.e., 6th May, 2022, on which date we adjourned the said M.A., an order was passed by the Additional Chief Judicial Magistrate remanding the petitioner to custody.

19. After the said M.A. was adjourned, the I.O. started acting on the letter dated 24th April, 2022 of the complainant, stating therein that though the petitioner was involved in the crime reported in FIR No.70 of 2020, no action was taken against him. During the pendency of the said M.A., the statements came to be recorded implicating the petitioner. On the same day when we adjourned the said M.A., i.e., on 6th May, 2022, an order was passed by the Additional Chief Judicial Magistrate, Rampur, remanding the petitioner to judicial custody in FIR No.70 of 2020. Thereafter on 10th May, 2022, the learned Single Judge of the Allahabad High Court has passed an order in Criminal Misc. Bail Application No.40580 of 2021, thereby granting bail to the petitioner in the said FIR No.312 of 2019.

20. The order of the learned Single Judge of the Allahabad High Court dated 10th May, 2020 runs into 40 pages. Stringent



conditions have been imposed by the learned Single Judge of the Allahabad High Court while releasing the petitioner on bail. We do not wish to make any comments with regard to the said bail order. The least that could be said is that this Court has repeatedly held that while deciding a bail application, the Court should not embark upon a detailed enquiry with regard to the merits of the matter. The learned Single Judge of the Allahabad High Court rightly observed that bail is a right of any accused and jail is an exception and therefore, on humanitarian grounds and keeping in view the applicant's/petitioner's deteriorating health, old age and the period undergone in jail, considered it just to grant bail by imposing stringent conditions.

21. It could thus be seen that the petitioner, who was accused in 87 criminal cases when he approached this Court by way of Writ Petition (Criminal) No. 39 of 2022 and was granted bail in 84 cases at that point of time, has now been granted bail in all 87 cases. It is only on account of implication of the petitioner



in FIR No. 70 of 2020 that he would be denied his personal liberty. Though FIR No. 70 of 2020 was registered on 18th March, 2020 and the charge-sheet in the said FIR was filed on 10th September, 2020, the petitioner in the said FIR has only now been implicated, i.e., after a period of 1 year and 7 months, by order dated 6th May, 2022 passed by the Additional Chief Judicial Magistrate, Rampur. It is not as if that the allegations which are now sought to be made against the petitioner could not have been made at that point of time. The main allegation against the petitioner in the said FIR No.70 of 2020 is that the certificates are forged. Further allegation is that the person who had issued the certificates was not authorized to issue those certificates.

22. Taking into consideration the delay in implication of the petitioner in FIR No. 70 of 2020 and the nature of the allegations made therein, we are of the considered view that it will not be in the interest of justice to deprive the petitioner of his personal liberty, particularly when in respect of 87 criminal



cases/FIRs, which were the subject matter of Writ Petition (Criminal) No. 39 of 2022, he has already been released on bail. The last of such bail order has been passed on 10th May, 2022 by the learned Single Judge of the Allahabad High Court after a gap of so many months from the date of reserving the order, i.e., 4th December, 2021.

23. Insofar as the contention that the petitioner threatened the I.O. is concerned, we may only observe that it appears to be a matter of sheer coincidence that the General Diary (GD) entry with regard to said threats is registered on 17th May, 2022 at 03:04 hrs., i.e., the date on which the present proceedings were to come up for hearing and were heard. We therefore do not find it necessary to make any further comments thereon.

24. We are therefore of the view that this is a fit case wherein this Court should exercise its jurisdiction under Article 142 of the Constitution of India and grant interim bail to the petitioner in the peculiar facts and circumstances of the case, till he files



the application for regular bail and the same is considered by the Competent Court.

25. Insofar as the other reliefs being sought in Writ Petition (Criminal) No.188 of 2022 are concerned, we are not inclined to consider the same.

26. In the result, we pass the following order:

- (i) The Writ Petition (Criminal) No.188 of 2022 is partly allowed;
- (ii) The petitioner is directed to be released on interim bail in respect of FIR being Case Crime No.70 of 2020, registered with Police Station Kotwali, Rampur, Uttar Pradesh for the offences punishable under Sections 420 and 120B of the IPC on such terms and conditions as found appropriate by the trial Court;
- (iii) The petitioner is directed to file an application for regular bail before the Competent Court within a period of two weeks from today. The same shall be decided by



the Competent Court on its own merits without being influenced by any of the observations made in the present order;

- (iv) The interim bail granted to the petitioner by the present order shall continue to operate till the decision of the Competent Court in the application for regular bail and in the event that the regular bail application is decided against the interest of the petitioner, the present interim bail shall continue to operate for a further period of two weeks from the date of the order passed by the Competent Court in the application for regular bail;
- (v) No orders are necessary to be passed in Miscellaneous Application No. 766 of 2022 in Writ Petition (Criminal) No. 39 of 2022 and I.A. No. 71580 of 2022 in Miscellaneous Application No. 766 of 2022 in Writ Petition (Criminal) No. 39 of 2022. The same are accordingly disposed of.



27. Pending application(s) if any, including the application(s) for directions, shall stand disposed of in the above terms.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[B.R. GAVAI]

.....**J.**
[A.S. BOPANNA]

NEW DELHI;
MAY 19, 2022.



ITEM NO.1503

COURT NO.5

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. No.71580 OF 2022 IN/AND Miscellaneous Application No.766/2022
in W.P.(Cr1.) No.39/2022

MOHAMMAD AZAM KHAN

Applicant/
Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH Respondent(s)
(IA No.62399/2022-EXEMPTION FROM FILING O.T. and IA No.62398/2022-
APPROPRIATE ORDERS/DIRECTIONS)

WITH
W.P.(Cr1.) No. 188/2022 (X)

Date : 19-05-2022 These matters were called on for pronouncement of
order today.

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Lzafeer Ahmad B. F., AOR
Mr. Nizam Pasha, Adv.
Mr. Jubair Khan, Adv.
Mr. Aditya Samaddar, Adv.
Mr. Ahmad Ibrahim, Adv.

For Respondent(s) Mr. S V Raju, Ld. ASG
Ms. Garima Prasad Sr. Adv./AAG
Mr. Ajay Vikram Singh, AOR.
Mr. Divyanshu Sahay, Adv
Ms. Priyanka Singh, Adv
Mr. Narender Rana, Adv
Mr. Neelambar Jha, Adv

The Order is pronounced by the Bench comprising
Hon'ble Mr. Justice L. Nageswara Rao, Hon'ble Mr. Justice
B.R. Gavai and Hon'ble Mr. Justice A.S. Bopanna.

This Court inter alia passed the following
order:

(i) The Writ Petition (Criminal) No.188 of



2022 is partly allowed;

(ii) The petitioner is directed to be released on interim bail in respect of FIR being Case Crime No.70 of 2020, registered with Police Station Kotwali, Rampur, Uttar Pradesh for the offences punishable under Sections 420 and 120B of the IPC on such terms and conditions as found appropriate by the trial Court;

(iii) The petitioner is directed to file an application for regular bail before the Competent Court within a period of two weeks from today. The same shall be decided by the Competent Court on its own merits without being influenced by any of the observations made in the present order;

(iv) The interim bail granted to the petitioner by the present order shall continue to operate till the decision of the Competent Court in the application for regular bail and in the event that the regular bail application is decided against the interest of the petitioner, the present interim bail shall continue to operate for a further period of two weeks from the date of the order passed by the Competent Court in the application for regular bail;

(v) No orders are necessary to be passed in Miscellaneous Application No. 766 of 2022 in Writ Petition (Criminal) No. 39 of 2022 and I.A. No.



71580 of 2022 in Miscellaneous Application No. 766 of 2022 in Writ Petition (Criminal) No. 39 of 2022. The same are accordingly disposed of.”

Pending application(s) if any, including the application(s) for directions, shall stand disposed of in the above terms.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Assistant Registrar

(Signed non reportable order is placed on the file)