

applicant upon release on bail may tamper with evidence and may influence the witnesses. There are also great apprehension that he may breach the conditions imposed by this Court and can repeat the same nature of offence in future. Taking into the consideration of aforesaid reasons, this Court cannot take lenient view while exercising its discretionary jurisdiction. (Para 22)

It is pertinent to note that co-accused in the matter who has been released on bail, however, bearing no resemblance to the present applicant as he is habitual offender and has criminal history of 52 cases. (Para 23)

Bail Application rejected. (E-14)

List of Cases cited:

1. Ram Govind Upadhyay Vs Sudarshan Singh, (2002) 3 SCC 598
2. Chaman Lal Vs St. of U.P. & anr., (2004) 7 SCC 525
3. Prasanta Kumar Sarkar Vs Ashish Chatterjee & anr., (2010) 14 SCC 496
4. Ms. Y. vs. St. of Raj. & anr., Criminal Appeal No-649 of 2022 decided on 19/04/2022
5. Mahipal Vs Rajesh Kumar, (2020) 2 SCC 118
6. Jagjeet Singh & ors. Vs Ashish Mishra @ Monu & anr., Criminal Appeal No. 632 of 2022, decided on 18.04.2022

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. The applicant through his brother Ram Balesh Yadav has preferred the instant bail application under section 439 Cr.P.C seeking regular bail in Case Crime No. 112 of 2023, under Section 406, 419, 420, 467, 468, 471, 120-B IPC, Police Station – Aims, District – Gorakhpur.

Brief Facts

2, The briefly stated basic facts of the application are as under:

(i) The applicant has been in jail since 28.7.2023. The first informant Pushpa Prajapati lodged a first information report (for short 'FIR') on 7.9.2025 at 6:07 PM against the applicant and another person namely Ajay Sharma, was registered as Case Crime No. 112 of 2023, under Section 406, 419, 420, 467, 468, 471, 120-B IPC, Police Station – Aims, District – Gorakhpur.

(ii) It is alleged in the FIR that the applicant is a property dealer and in lieu of providing land of Gata No. 112 situated at village – Bahrapur, Tehsil – Chauri Chaura, District – Gorakhpur, he has taken an amount of Rs. 50,000/- and Rs. 2,00,000/- from complainant Pushpa Prajapati. At the time of execution of sale deed the first informant gave two cheques amounting to Rs. 7,00,000/- and Rs. 2,00,000/ in the name of “Vindhyavasini Traders”. After sometime, he returned both the cheques and stated that the signatures made on the cheques did not match. Thereafter, she transferred an amount of Rs. 2,00,000/- in the account of one Ajay Sharma, thereby a sum of Rs. 14,50,000/- paid to the applicant for the said property. It is further alleged that after purchasing the said property, Pushpa Prajapati also constructed a residential house and has been residing alongwith family., during that period she came to know of the fact that the sale deed was executed by standing imposter person showing himself to be Ajay Sharma, real owner of the land. The applicant had applied for bail before Additional Sessions Judge, Court No. 2, Gorakhpur which was rejected vide order dated 16.6.2024 on the ground of gravity of offence committed by the applicant is heinous in nature.

(iii) Co-accused namely Chandra Shekhar Shahi, Sub Registrar, who registered the alleged sale deed has been granted bail by the Additional Sessions Judge/ Special Judge (Prevention of Corruption Act) (UPSEB), Gorakhpur vide order dated 7.11.2023 on the ground that he was not named in the FIR and same sale deed registered by him has still not been declared invalid by any court of law.

(iv) There are criminal history of 52 cases against the accused/applicant and most of the cases are filed against the accused under Section 420 IPC. Moreover, out of 52 criminal cases including present case, applicant has been granted bail and no charge sheet has been filed against the accused/applicant in the remaining cases yet.

Submissions by the counsel for the applicant.

3. It is submitted that the alleged sale deed was executed on 11.11.2019 and the FIR was lodged in the year 2023 after lapse of 4 years of the incident without explanation of the delay in lodging the said FIR. It is vehemently submitted that the FIR is lodged as after thought with malice intent.

4. According to the FIR, it is submitted that alleged amount of Rs. 14,50,000/- was paid to the applicant as well as to co-accused Ajay Sharma . However, the applicant received total amount of Rs. 9,60,000/- in his account and Rs. 2,00,000/- was received through RTGS in the account of Ajay Sharma on 4.12.2019.

5. It is submitted that the applicant has transferred entire amount which was deposited by the first informant in the

account of the applicant through co-accused Ajay Sharma at the time of execution of sale deed. After taking entire consideration of amount of land in question, co-accused Ajay Sharma has executed sale deed in favour of first informant Smt. Pushpa Prajapati, in which there is no fault of the applicant. It is contended that the real owner of the subject property is Ajay Sharma, who has executed the sale deed. He has also submitted his Aadhar Card in the office of Sub-Registrar, therefore, he was not imposter as alleged in the FIR. There was no imposter person, who executed the sale deed.

6. It is further submitted that applicant is not involved in such type of offence. The first informant has falsely dragged him in the present case because the applicant is mediator and received amount in his account, but the applicant after withdrawing the entire amount given the same to the land owner prior to execution of sale deed, in which there is no fault of the applicant.

7. It is also submitted that the applicant has not committed the offence as alleged in the FIR. The first informant has falsely implicated the applicant as accused in the present case only because he has introduced the first informant to Ajay Sharma. It is contended that co-accused namely Chandra Shekhar Shahi has already been granted bail by the Additional Sessions Judge/ Special Judge (Prevention of Corruption Act) (UPSEB), Gorakhpur vide order dated 7.11.2023 on the ground that he was not named in the FIR and and same sale deed has been registered by him as sale has not been declared invalid by any court of law. As per FIR, the role of the the applicant in the instant case is that he introduced the first informant to the land

owner for alleged sale deed, therefore, he is also interested for getting bail by Hon'ble Court.

8. In view of the aforesaid submissions, it is prayed by the counsel appearing on behalf of the applicant that the applicant may be released on bail subject to the conditions which this Court deems fit to impose on the applicant while granting bail.

Submissions of learned AGA appearing on behalf of the State.

9. Learned AGA vehemently oppose the bail application of the applicant on the ground that there are 52 criminal cases registered against the applicant and mostly are registered under Section 420 IPC.

10. It is submitted that during investigation, the Investigating Officer recorded the statement of first informant Smt. Pushpa Prajapati under Section 161 Cr.P.C. on 10.9.2023 and she has corroborated the same version as in the FIR.

11. It is submitted that grant of bail to the co-accused does not have any bearing in the present case, since the applicant is the main accused in the matter, he may not be granted bail since, there is an apprehension that he may tamper with the evidence or linger the process of investigation or trial as he is a habitual offender.

12. It is further submitted that in view of the aforesaid submissions, the applicant has failed to make out a case to release him on bail as prayed in the instant bail application. The applicant does not deserves any leniency from this Court for

releasing him on bail. The application is devoid of any merit and is liable to be rejected.

Analysis and Finding.

13. Heard learned counsel for the applicant, learned AGA for the State and perused the material available on record.

14. At this juncture, before adverting to the merit of the case, this Court deems it is pertinent to reiterate law pertaining to grant of bail in various factors which needs to be taken into consideration for the same.

15. The Hon'ble Supreme Court in the case of **Ram Govind Upadhyay Vs. Surdarshan Singh**¹, in paragraph nos. 3 and 4 of this judgement, has observed as under.

"3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case...The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) *While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

(b) *Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter grant of bail.*

(c) *While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*

(d) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

16. In the case of **Chaman Lal Vs. State of UP And Another²**; the Hon'ble Supreme Court in its para-9, has held as under:

"9: There is a need to indicate in the order, reasons for prima facie concluding why bail was beng granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with t he application for bail to consider among other circumstances, the following factors also before granting bail, they are :

1. *The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*

2. *Reasonable apprehension of tempering with the witness or apprehension of threat to the complainant.*

3. *Prima facie satisfaction of the court in support of the charge.*

10 *Any order de hors of such reasons suffers from non-application of mind as was noted by this Court in Ram Goviind Upadhyay Vs. Sudarshan Singh, Puran Vs. Rambilas and in Kalyan Chandra Sarkar Vs. Rajesh Ranjan.*

11. *Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and claborate documentation of the merits of the case is not to be undertaken., But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated.*

17. In the case of **Prasanta Kumar Sarkar vs Ashish Chatterjee & Anr³**. the Hon'ble Supreme Court held as under:

Para 09: *We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail. Among other circumstances.

18. As per the aforesaid judgment, the Hon'ble Supreme Court eventually held that while considering for granting bail to the applicant, it is the duty of the court to taken into consideration certain factors such as nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and prima facie satisfaction of the court in support of the charge.

19. The Supreme Court in the case of **Ms. Y. vs. State of Rajasthan And Anr**⁴; held that there is no strait jacket formula for grant of bail and the court shall exercise its discretion for grant for grant of bail in accordance with the facts and circumstances of the bail application before it. The relevant paragraphs no. 8,9,10,11,12,13 and 14 are reproduced herein bellow.

8. Supreme court has, in a catena of judgments, outlined the considerations

on the basis of which discretion under Section 439, CrPC has to be exercised while granting bail. In **Gurcharan Singh v. State (Delhi Administration)**⁵, this Hon'ble Supreme Court has held as to the various parameters which must be considered while granting bail. Supreme court held as follows:

"24. ...Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations 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) CrPC 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 victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

9. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character,

*position and standing of the accused [see State of U.P. v. Amarmani Tripathi*⁶,

10. At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial.

11. Once bail has been granted, the Appellate Court is usually slow to interfere with the same as it pertains to the liberty of an individual. A Constitution Bench of this Court in **Bihar Legal Support Society v. Chief Justice of India**⁷, observed as follows:

“3. ... It is for this reason that the Apex Court has evolved, as a matter of selfdiscipline, certain norms to guide it in the exercise of its discretion in cases where special leave petition are filed against orders granting or refusing bail or anticipatory bail....We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter.”
(emphasis supplied)

12. The above principle has been consistently followed by this Court. In **Prasanta Kumar Sarkar v. Ashis Chatterjee**⁸, this Court held as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously,cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other

circumstances, the factors to be borne in mind while considering 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 accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

xxx xxx xxx

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non application of mind, rendering it to be illegal.....”

13. In **Mahipal v. Rajesh Kumar**⁹, this Court followed the holding in **Prasanta Kumar Sarkar** (supra) and held as follows:

“17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a nonapplication of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed

the crime, also taking into account the seriousness of the crime and the severity of the punishment...”

14. Recently, a three Judges' Bench of this Court in **Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr**10. in Criminal Appeal No. 632 of 2022, has reiterated the factors that the Court must consider at the time of granting bail under Section 439 CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the above mentioned section. Supreme court observed as follows:

“28. We may, at the outset, clarify that power to grant bail under Section 439 of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court of the Sessions Court must grant bail after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner..

20. Now advertent to the merits of the instant case, it is admitted fact that the present applicant is involved in 52 criminal cases of the similar nature. The details of which has been explained by the applicant himself in paragraph no. 17 of the affidavit supported with the bail application and almost all criminal cases are of similar nature.

21. The details of the antecedents of applicant are as under:

Sl No.	FIR / Case Crime No.	Proceedings.
--------	----------------------	--------------

1.	100/2023 u/s 406 IPC	Bail granted on 27.9.2023
2.	79/2023 u/s 406, 420 IPC	Bail granted on 27.9.2023
3.	129/2023 u/s 120-B, 406, 420 IPC	Bail granted on 12.2.2024
4.	77/2023 u/s 406, 420, 504, 506 IPC	Bail granted on 11.10.2023
5.	75/2023 u/s 420, 406, 504, 120-B	Bail granted on 5,10,2023
6.	72/2023 u/s 406, 420, 410, 467, 468, 471, 120-B IPC	Bail granted on 17.10.2023
7.	71/2023 u/s 406, 420, 419, 467, 468, 471, 120 B IPC	Bail granted on 9.10.2023
8.	81/2923 u/s 406, 419, 420, 467, 468, 471, 120-B IPC	Bail granted on 26.10.2023
9.	354/2022 u/s 406, 420, 504, 506 IPC	Bail granted on 27.9.2023
10.	27/2023 u/s 410, 420, 467, 468, 471, 504, 506, 406, 120-B IPC	Bail granted on 28.8.2023
11.	133/2023 u/s 406, 420, 504, 506, 120-B IPC	Bail granted on 13.3.2024
12.	162/2023 u/s 406, 420, 506 IPC	Bail granted on 3,5,2024
13.	74/2023 u/s 406, 420 IPC	Bail granted on 4.5.2024
14.	233/2023 u/s 406, 420 IPC	Bail granted on 4.5.2024
15.	185/2023 u/s 406, 420 IPC	Bail granted on 7.5.2024
16.	367/2023 u/s 406, 506 IPC	Bail granted on 7.5.2024
17.	193/2023 u/s 447, 506 IPC	Bail granted on 8.5.2024
18.	268/2023 u/s 406, 420 IPC	Bail granted on 14.5.2024
19.	247/2023 u/s 420, 406, 504, 506 IPC	Bail granted on 16.5.2024
20.	164/2023 u/s 406, 420, 506 IPC	Bail granted on 16.5.2024
21.	187/2023 u/s 406, 420, 506 IPC	Bail granted on 21.5.2024
22.	168/2023 u/s 420, 406, 506 IPC	Bail granted on 18.5.2024
23.	134/2023 u/s 406, 420, 120-B IPC	Bail granted on 14.5.2024
24.	135/2023 u/s 406, 420, 120-B IPC	Bail granted on 23.4.2024
25.	45/2024 u/s 406, 420, 506, 120B IPC	Bail granted on 7.6.2024
26.	145/2023 u/s 406, 420, 504, 506 IPC	Bail granted on 10.6.2024
27.	188/2023 u/s 406, 420 IPC	Bail granted on 11.6.2024
28.	64/2024 u/s 406, 420 IPC	Bail granted on 11.6.2024

