

**Court No. - 15**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 522 of 2025

**Applicant :-** Satyendra Kumar Yadav

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home  
Lucknow

**Counsel for Applicant :-** Lallan Rai, Pradeep Kumar  
Rai, Prakarsh Pandey, Praveen Kumar Shukla

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

**Hon'ble Shree Prakash Singh, J.**

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail during the trial in Case Crime No. 0029 of 2024 under section 7 of P.C. Act P.S.- Lucknow Sector(Satarkata Adhistan) District - U.P. Satarkata Adhistan, Lucknow.

As per the prosecution story, a complaint was made by Mahendra Kumar Tripathi to Superintendent of Police(Satarkata Adhistan) Lucknow Sector Lucknow on 28.11.2024, alleging therein, that he was contractor and had undertaken the road construction work and that was completed through a contract under PMGSY scheme in construction division-2 District-Hardoi whereafter, a bill of Rs. 40,00,000/- was to be paid after the completion of work and in lieu thereof, the present applicant allegedly demanded Rs. 10,00,000/- and threatened him that if the aforesaid demanded is not fulfilled, the amount of bill will not be paid.

The contention of learned counsel for the applicant is that the applicant is innocent and has falsely been implicated in the instant matter due to ulterior motive. He submits that the applicant was working as Junior Engineer in Construction Division-2 District-Hardoi and he forwarded the bill of construction work on 30.12.2023 to the Executive Engineer, PWD and that was pending consideration before him whereas, the proceedings of trap is of 02.12.2024 and therefore, there was no occasion to demand the illegal gratification from the applicant. In support of his contentions, he has placed reliance on the judgment reported in **2023 4 SCC 731 [Neeraj Dutta vs State(Govt.Of N.C.T.Of Delhi)]** and has referred paragraph

no. 88.1 and 88.7. Paragraph nos. 88.1 and 88.7 are quoted hereinunder:-

*"88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d) (i) and (ii) of the Act.*

*88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d) (i) and (ii) of the Act."*

Referring the aforesaid, he submits that it has specifically been held by the Apex Court that the proof of demand and acceptance of illegal gratification by a public servant is a sine qua non in-order to establish the guilt of the accused of public servant. Further, the Apex Court has also held that the presumption, whether a factual presumption or presumption in law, is subject to the rebuttal and therefore, the same is not admissible baldly. While adding his arguments, he submits that the complainant was having enmity with the applicant and as such, he has hatched him in criminal conspiracy. He has also drawn attention towards annexure nos. 2, 3 and 4 and submitted that many at a time, the letters were written to the applicant while showing the deficiency in the work and particularly, a letter dated 08.07.2022 reveals that the work which was shown to be done by the complainant was fake and therefore, the verification of CRC is directed. He also submits that in fact the trap-in proceedings is conducted due to animosity of the complainant and in-collusion with the other authorities and in fact, the applicant was not involved in committing offence. He also argued that so far as the proceedings of search in the present case is concerned that vitiates as the same is against the mandate of provision of sub-section 4 and 5 of section 103 B.N.S.S. 2023, sub-sections 4 and 5 of section 103 B.N.S.S. are quoted hereinunder:-

*"(4) Before starting the search, the officer must ask two or more trustworthy local people to watch the search. If no local people are available, they can ask people from another area.*

*(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it."*

Referring the aforesaid, he submits that the mandate is very clear that search and seizure should be done on the place of offence and the witnesses should be independent and in presence of respectable inhabitants of the locality though, the witnesses which are shown are not the local witnesses rather they are the pocket witnesses and further submitted that the search proceedings is done 9Km away from the place of the alleged occurrence. In support of his contentions, he has placed reliance on a judgment of High Court of Rajasthan dated 08.05.2024 passed in Bail Application no. 5457 of 2024 and has referred paragraph no. 15 of the said judgment, paragraph no. 15 of the judgment is quoted hereinunder:-

*"The credibility of the seizure memo loses significance if the thing is recovered at a distant place and it is taken by the police from the crime scene to the police station and then memos got prepared in the police station. If it is allowed then why not in every case the things may be taken from the crime scene and whereafter, the entire proceeding be undertaken in the premises of police station and then why not in every case the accused can be detained from any place and whereafter his/her/their memo of arrest be prepared in the police station. This Court is of the view that if anything or any incriminating material is collected or recovered from a particular place and at a particular time then the seizure memo/recovery memo should have been prepared at the same place and that too in the presence of the witnesses of the same locality. A slight departure or deviation can be permitted in case when no other person is available to verify the fact of recovery at the crime scene then the members of the police party can be made witness of the fact of recovery. In certain circumstances, when there is heavy rain or there is heavy traffic on the highway or other like situation, in that cases also, the seizure memo can be prepared at a nearby place so that the proceedings can be undertaken calmly or safely. However, it is not permissible for a police officer to pick the contraband from a particular place then carry with him to the police station which is situated at a far place and whereafter prepare the seizure memo in the police station premises. The moment this kind of practice is permitted; the day is not far when there would be a trait that the police officers will claim that though the memos were prepared in the police station but the things were recovered from a different place. In that situation, the purity, originality, genuineness and virtuousness would be lost and at the same time, there would be serious aspersions regarding fairness and genuineness of factum of seizure."*

Referring the aforesaid, he submits that it has specifically been held that the credibility of the seizure memo loses its significance if the thing is recovered at the distant place and is taken by the police from the crime scene to the other place.

Concluding his arguments, he submits that the applicant is a Government Servant and he has cooperated in the investigation proceedings and chargesheet has been filed as such, there is no possibility that he would tamper the evidence or would threaten the witnesses and the applicant has no previous criminal history as is mentioned in paragraph no. 28 of the affidavit filed in

support of the bail application and he is languishing in jail since 03.12.2024 and he undertakes that in case, he is granted bail, he will not misuse the liberty of the same and would cooperate in the trial proceedings.

Learned A.G.A. appearing for the State has opposed the contentions aforesaid and submits that as per the complaint it is evident that the applicant demanded the illegal gratification of Rs. 10,00,000/- and he was trapped-in and was caught red handed while taking the bribe. He also submits that the shadow witnesses were present and all the proceedings were done in presence of two witnesses. Next submission is that the occasion for the demand was there as the bill of the applicant was pending since December, 2023 and that was not being paid even after the work was completed by the complainant. Further submission is that the applicant is a Government servant and thus, there is possibility that the applicant would tamper the evidence therefore, he is not entitled for bail.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that the applicant was arrested by a team of Anti-Corruption Vigilance Department while taking the bribe of Rs.1,00,000/-. So far as the procedure with respect to search and seizure is concerned, this Court has examined the same and it is found that the search and seizure proceedings was completed nine Kilometers away from the place of occurrence and this fact has not been disputed by counsel for the State. The provision prescribed under sub-section 4 and 5 of section 103 of B.N.S.S. is apparent that the search shall be made in the presence of two witnesses and further in presence of inhabitants of the locality which indicates that the intent of the legislature is that search should be done in the locality when the offence is committed.

Further so far as the occasion of demand of illegal gratification is concerned, when this Court examines the aforesaid, it is apparent from the record appended alongwith the bail application that the bill submitted by the complainant was forwarded by the present applicant on 03.12.2023 which was pending before the Executive Engineer and therefore, prima facie, it does not seem that there was any occasion of demand of illegal gratification after about one year i.e. on 02.12.2024. The law laid down by the Apex Court in case of Neeraj Dutta(Supra) it has been held by the Apex Court that a proof of demand and acceptance of illegal gratification is as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused and here the same is missing and therefore, this Court finds that the case of the present applicant is squarely covered with the ratio of judgment above-said.

It is also noticeable that the applicant has no previous criminal history as is mentioned in paragraph no. 28 of the affidavit filed in support of the bail application and the applicant was working as the Government Servant and chargesheet has been filed as such, there seems to be no possibility that he will flee away from the trial proceedings or he would tamper the evidences. Further, the applicant is languishing in jail since 03.12.2024 and he undertakes that in case, he is granted bail, he will not misuse the liberty of the same and would cooperate in the trial proceedings.

Considering the submissions of learned counsels for the parties, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and considering larger mandate of the Article 21 of the Constitution of India and, without expressing any view on the merits of the case, I find it to be a fit case of bail.

Let the applicant- **Satyendra Kumar Yadav** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

(1) The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, or otherwise during the investigation or trial;

(2) 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. He 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;

(3) 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.; and

(4) 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, the trial court shall initiate proceedings against him, in accordance with law under Section 174-A of the Indian Penal Code.

The identity, status and residential proof of sureties will be verified by the court concerned and in case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail and send the applicant to prison.

It is clarified that the observations made in this order are strictly confined to the disposal of this bail application and must not be construed to have any reflection on the merits of the case.

**Order Date :- 5.3.2025**

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