

Court No. - 6

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19839 of 2021

Applicant :- Sahil

Opposite Party :- State of U.P.

Counsel for Applicant :- Vikash Chandra Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Instructions from the police authorities were not available with the Additional Government Advocate. Consequently the Additional Government Advocate was not in a position to present the full and true facts of the case and the bail application could not be heard. No explanation was given for failure on part of the police authorities to furnish the appropriate instructions to the AGA, despite ample time being given to the police authorities. The Court was constrained in the circumstances to direct the SSP/ DIG to be present before the Court through video conferencing.

In compliance of the order of this Court dated 19.05.2021, Sri Amit Pathak SSP/ DIG, Ghaziabad is present through video conferencing.

Sri Vinod Kant, learned Additional Advocate General submits that instructions are now available. It is further submitted on behalf of the State that an enquiry has been ordered into the failure of the concerned official to send timely instructions to the Government Advocate in this case for the purposes of contesting

the bail application.

The purpose of giving advance notice of bail applications to the office of Government Advocate is to ensure that police authorities/ prosecution are able to furnish timely instructions in the case to the Government Advocate. The Government Advocate/ A.G.As can assist the Courts in the hearing of the bail applications only if full and complete instructions are available with them before the bail applications is taken up for hearing. The right of an accused to have his bail application heard by the Court within a reasonable time has been entrenched as a constitutional liberty. The right flows from Article 21 according to pronouncements of Constitutional Courts. **(See: Ajeet Chaudhary Vs. State of U.P. and another reported at 2021 (1) ADJ 559).**

With a view to streamlining the procedure for providing timely instructions to the GA/AGA certain directions were issued by this Court in **Ajeet Chaudhary (supra)**. The aforesaid case was related to offences under the SC/ST Act. However, an analogous procedure can also be created for other criminal cases as well. Failure of the police authorities to provide timely instructions to the GA/ AGA in bail applications causes delay in the hearing of the bail applications, and often leads to unjustified incarceration of an accused in jail. The concerns expressed in **Ajeet Choudary**

(supra) are applicable to all bail applications. The timelines in the procedure to provide instructions may vary as per the provisions of law. But the timeline has to be defined to ensure that hearing of the bail applications is not delayed indefinitely to the detriment of the accused/ bail applicant.

Sri Vinod Kant, learned Additional Advocate General could not inform the Court about compliance of directions issued by this Court to the competent police authorities in **Ajeet Chaudhary (supra)**, despite grant of opportunity. Sri Vinod Kant, learned Additional Advocate General however categorically assured the Court that the State Government has an unconditional commitment to uphold the rule of law and to comply with the orders passed by this Court in letter and spirit.

The Court has good reason to trust the statement of the learned Additional Advocate General made at the bar regarding implementation of Court orders; but equally the Court has strong cause to verify the actions of the state officials to comply with the Court orders. Sri Vinod Kant, learned Additional Government Advocate also states that the police authorities will streamline the process of imparting instructions to the GA/AGAs in bail applications and have no objection to create a procedure for the same.

The statement of Sri Vinod Kant, learned Additional Advocate General regarding expeditious compliance

of directions issued in **Ajeet Chaudhary (supra)** is reassuring. The surest foundation of the rule of law and stability of constitutional order lies not only in the existence of an independent judiciary; but equally in the regard shown by every constitutional organ of governance to the fundamental rights of all citizens, and actions of state officials to diligently comply with the orders passed by the Court.

The process of furnishing instructions to the GA/ AGA before hearing of bail applications has to contain safeguards which protect the constitutional liberties of the bail applicants/ accused persons. To achieve the aforesaid, the procedure has to be transparent, with well defined responsibilities, and definite timelines. The responsible officials should be accountable for failures to adhere to the said procedure and timelines stated therein.

The Director General of Police, U.P. Police is directed to ensure that a fair, transparent and clear procedure for supplying instructions to the GA/AGA in bail applications before the High Court is created and implemented across the State of U.P. The procedure shall include the designation of the officials, the tasks or duties which they have to discharge, and a definite time frame for such purpose. It shall be ensured that there is constant oversight of the implementation of such procedure and appropriate departmental action as

per law is taken against officials who without good cause fail to discharge their assigned duties therein.

The Director General of Police, U.P. Police, is commanded to comply with the directions within a period of eight weeks as suggested by Sri Vinod Kant, learned Additional Advocate General. The affidavit regarding compliance of the directions passed in this order, as well in **Ajeet Chaudhary (supra)** shall be filed on behalf of DG, U.P. Police before the Registrar General on or before 06.08.2021.

Put up this matter on 26.05.2021 in the list of fresh cases before appropriate Bench to enable the learned counsel for the applicant to explain the criminal history of the applicant, as disclosed by the learned Additional Advocate General on basis of instructions.

Creation of a similar procedure for all District Courts may also be considered if deemed appropriate.

Presence of D.I.G/ S.S.P, Ghaziabad is exempted on future dates.

Order Date :- 20.5.2021
Nadeem Ahmad