

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32685 of 2023

Applicant :- Shubham Singh @ Golu And Another

Opposite Party :- State of U.P.

Counsel for Applicant :- Gyanendra Singh, Diwakar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Heard learned counsel for the applicants, learned A.G.A. and perused the record.

2. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 284 of 2019, under Sections 3(1) of the U.P. Gangster & Prevention of Anti Social Activities Act, 1986 Police Station Shivpur, District Varanasi with the prayer to enlarge him on bail.

3. Learned counsel for the accused-applicants has submitted that the applicants are innocent and have been falsely implicated in the instant case due to malafide intentions. According to gang-chart (Annexure No.2), 2 cases have been registered against the accused-applicant in which he is enlarged on bail. Copy of the bail order is annexed with the bail application and marked as Annexure No.3. Apart from the case mentioned in the gang chart, the applicant has criminal history of two cases in which he has been enlarged on bail and copy of bail orders is annexed as Annexure Nos. 8 & 9 to the bail application. It is next contended that similarly situated co-accused Anupam Nagvanshi @ Kundan Singh and Raghul Singh Rajpoot have already been enlarged on bail by coordinate Benches of this Court vide orders dated 10.2.2023 and 21.3.2023 passed in Criminal Misc. Bail Application Nos. 6561 of 2023 and 12397 of 2023, copy whereof

has been filed as Annexure-10 to the affidavit accompanying bail application. The applicants are languishing in jail since 28.4.2019. It is lastly submitted that since the role of the present applicant is identical to that of co-accused, who have already been enlarged on bail, present applicants are also entitled to be enlarged on bail on the ground of parity and if they are granted the liberty of bail they will not misuse the same and they are ready to furnish their sufficient sureties, bonds and personal bonds.

4. On the other hand, learned AGA has vehemently opposed the prayer for bail but could not controvert the fact that identically situated co-accused have been enlarged on bail.

5. Considering the fact that applicant has properly explained the criminal history, in which he has been granted bail, identically situated co-accused have been enlarged on bail and without expressing any opinion on the merits of the case, accused-applicants are liable to be released on bail.

6. Let applicants **Shubham Singh @ Golu and Sunil Singh** be released on bail in the above case crime number and on their furnishing personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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 applicants 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 applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 applicants 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 applicants are 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 them in accordance with law.

(v) The applicants shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicants shall also give an undertaking to the effect that they will not change their address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 16.10.2023
Faridul