Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36410 of 2023

Applicant :- Mohd. Azeem And Another
Opposite Party :- State of U.P.
Counsel for Applicant :- Hiralal
Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Supplementary affidavit filed by the learned counsel for the applicants is taken on record.

2. Heard learned counsel for the applicants as well as learned A.G.A. for the State of U.P. and perused the record.

3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicants on bail in Case Crime No. 238 of 2022, under Section 3(1) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (for short, the "Gangsters Act"), Police Station Chandauli, District Chandauli during the pendency of the trial.

4. Learned counsel for the applicants submits that according to the gang chart, one case is shown against the applicants and in the said case the applicants have been enlarged on bail. It is next contended that apart from the case mentioned in the gang chart, the applicant no. 1 is involved in another case. In the said case also the applicant no. 1 has been granted bail.

5. He further submits that in the F.I.R., in issue, the allegations with regard to disturbing the public order, as also regarding gaining undue temporal, pecuniary, material or other advantage of like nature, against the applicants are vague. In absence of allegation concerning an act or omission on the part of an accused, covered by the definition of terms "gang" and "gangster" as provided under Section 2 of the Gangsters Act, no F.I.R. is maintainable. In the instant case, the F.I.R. is based upon the pending criminal cases and not upon any new allegations or discovery of facts having serious reflection on the society, for which purpose the Gangsters Act was enacted.

6. It is also submitted that considering the facts of the case, as stated above, there are reasonable grounds for believing that the applicants are not guilty of the offence under the Gangsters Act and that they would not commit the offence while on bail nor would try to tamper the evidence or influence the witnesses in any manner whatsoever it may be. The applicants are in jail since 11.07.2023.

7. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

8. Considering the rival submissions of learned counsel for parties, material available on record as well as taking note of Section 19(4)(b) of the Gangsters Act, in light of the submission of counsel for the applicants to the effect that while on bail in this case the applicants would not commit any crime/offence nor would try to tamper the evidence or influence the witnesses in any manner, whatsoever it may be, and without expressing any opinion on the merits of the case, I am of the view that the applicants are entitled to be released on bail. Accordingly, the bail application is allowed.

9. Let the applicants- Mohd. Azeem and Mohd. Usman, involved in the aforesaid case, be released on bail on their furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

(i) the applicants shall not tamper with the prosecution evidence;

(ii) the applicants shall not pressurize the prosecution witnesses; and,

(iii) the applicants shall appear on each and every date fixed by the trial court.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 18.10.2023
SKT/-

Digitally signed by :-
SHIVA KANT TIWARI
High Court of Judicature at Allahabad