Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37373 of 2023

Applicant :- Rabbani
Opposite Party :- State of U.P.
Counsel for Applicant :- Bal Mukund Singh,Sunil Kumar Chaudhari
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Supplementary affidavit filed today is taken on record.

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

3. The present first bail application under Section 439 Cr.P.C. has been filed on behalf of the applicant in Case Crime No. 175 of 2023 under Sections 3(1) of the U.P. Gangster & Prevention of Anti Social Activities Act, 1986 Police Station Kundarki, District Moradabad with the prayer to enlarge him on bail.

4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to malafide intentions. According to gang-chart (Annexure No.2), only single case has been registered against the accused-applicant in which he is enlarged on bail. Copy of the bail order is annexed as Annexure No. S.A. 2 to the supplementary affidavit filed. Apart from the case mentioned in the gang chart, the applicant has criminal history of four more cases and in all of them he has been enlarged on bail and copy of the bail orders are annexed as Annexure No. S.A. 2 to the supplementary affidavit filed today. It is further submitted that similarly situated co-accused, Danish, has already been enlarged on bail by this Court vide order dated 11.10.2023 passed in Criminal Misc. Bail Application No. 37824 of 2023. Applicant is languishing in jail since 09.08.2023 and if he is granted the liberty of bail he will not misuse the same and would cooperate in the trial proceedings.

5. On the other hand, learned AGA has opposed the prayer of bail but could not controvert the aforesaid arguments as advanced by learned counsel for the applicant.

6. Considering the facts and circumstances of the case and taking into account the fact that the accused-applicant has been enlarged on bail in the cases shown in the gang-chart, criminal history is well explained coupled with the fact that similarly situated co-accused has been enlarged on bail and without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicant on bail.

7. Let applicant **Rabbani** be released on bail in the above case crime number and on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

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

(iv) 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. If in the opinion of the trial court absence of the applicant is 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 him in accordance with law.

(v) The applicant 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 applicant shall also give an undertaking to the effect that he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 16.10.2023

Karan

Digitally signed by :-
KUMAR KARAN RAO
High Court of Judicature at Allahabad