

Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40082 of 2023

Applicant :- Gaurav Mittal Alias Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Ali Hasan, Istiyaq Ali

Counsel for Opposite Party :- G.A., Praveen Kumar Srivastava

Hon'ble Mrs. Renu Agarwal, J.

1. Heard learned counsel for the applicant, learned counsel for the informant, learned A.G.A. for the State and perused the record.
2. The present application for bail has been filed seeking bail in Case Crime No.33 of 2023, under Section 2/3 of Uttar Pradesh Gangsters and Antisocial Activities (Prevention), Act, 1986, Police Station Fatehganj.
3. It is submitted that this is second bail application moved on behalf of the applicant. The first bail application moved on behalf of the applicant being Criminal Misc. Bail Application No.18271 of 2023 was rejected by this Court with permission to file a fresh bail application.
4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to ulterior motive. According to the gang-chart (Annexure No.4), only one case i.e. Case Crime No.26 of 2022, under sections 302, 364, 365, 386, 201, 120-B, 411 IPC, Police Station Fatehganj Paschimi, District Bareilly has been shown against the accused-applicant, in which he has been enlarged on bail by the co-ordinate Bench of this Court vide order dated 05.01.2023 in Criminal Misc. Bail Application No.59085 of 2022. Copy of bail order is also annexed as annexure no.4 to the affidavit filed in support of bail application. Apart from the case shown against the applicant in the gang chart, the applicant has no criminal history, as mentioned in para-9 to the affidavit filed in support of the bail application. The applicant is languishing in jail since 28.03.2023, in case he is enlarged bail, he will not misuse the liberty and would cooperate in the trial proceedings.

4. On the other hand, Sri Praveen Kumar Srivastava, learned counsel for the informant and learned AGA have opposed the prayer for bail and submitted that applicant is the main accused and gang leader and has made plain of kidnapping of his uncle and therefore killed him due to some property dispute. It is further submitted that in Case Crime No.26 of 2022, false sureties have been produced in the court and proceeding in this regard are pending against the sureties, hence applicant is not entitled to be enlarged on bail and his bail applicant is liable to be cancelled.

5. Considering the facts and circumstances of the case and taking into account that gangster act has been imposed upon the applicant on the basis of only one case i.e. Case Crime No.26 of 2022 in the which the applicant has already enlarged on bail by the co-ordinate Bench of this Court, apart from the case shown against the applicant in the gang chart, the applicant has no criminal history, as mentioned in para-9 to the affidavit filed in support of the bail application, applicant is languishing in jail since 28.03.2023 and undertakes that in case he is enlarged bail, he will not misuse the liberty and would cooperate in the trial proceedings, without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicant on bail.

6. Let applicant-**Gaurav Mittal Alias Sonu**, be released on bail in the above case crime number 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.

The trial court concerned is directed to conduct the trial of the case on day-to-day basis and applicant is also directed to co-operate with the trial and shall appear in the court on the date fixed by the court concerned & also for his cross examination and shall not make any default in his appearance. Applicant is further directed to appear in Case Crime No.26 of 2022, on the date fixed by the court concerned & also for his cross examination and shall not make any default in his appearance.

(Mrs. Renu Agarwal,J.)

Order Date :- 21.11.2023
VKG