Court No. - 74
Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41518 of 2023
Applicant :- Lalpankhi Devi And 3 Others
Opposite Party :- State of U.P.
Counsel for Applicant :- Anil Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

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

2. Heard learned counsel for the applicants as well as Sri Rupak Chaubey, 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. 135 of 2023, under Section 3(1) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (for short, the "Gangsters Act"), Police Station Dullahpur, District Ghazipur during the pendency of the trial.

4. Learned counsel for the applicants submits that according to the gang chart, seven cases are shown against the applicant nos. 1, 3 and 4 and eight cases are shown against the applicant no. 2 and in the said cases the applicants have been enlarged on bail. It is next contended that apart from the cases mentioned in the gang chart, the applicant no. 2 is involved in three cases. In the said cases also the applicant no. 2 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. It is next contended that co-accused Sunita, Veeru Devgan and Ritesh @ Nirahu have been granted bail by this Court in Criminal Misc. Bail Application No. 44817 of 2023, Sunita and 2 others v. State of U.P., vide order dated 26.10.2023. The applicant claims parity.

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 27.06.2023.

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- Lalpankhi Devi, Ravindra Kharwar, Karishma Kharwar and Pooja Devi, involved in the aforesaid case, be released on bail on their furnishing a personal bond and two heavy 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;

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

(iv) the applicants shall appear on the first Sunday of every month at the police station concerned.

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 :- 8.11.2023
SKT/-

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