Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40291 of 2023

Applicant :- Abhay Thathera @ Arvind
Opposite Party :- State of U.P.
Counsel for Applicant :- Buddha Prakash
Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

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

2. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 236 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 Kotwali Nagar, District Mau during the pendency of the trial.

3. Learned counsel for the applicant submits that according to the gang chart, two cases are shown against the applicant and in the said cases the applicant has been enlarged on bail. It is next contended that apart from the cases mentioned in the gang chart, the applicant is involved in thirteen other cases. In the said cases also he has been granted bail.

4. 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 applicant 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.

5. It is also submitted that considering the facts of the case, as stated above, there are reasonable grounds for believing that the applicant is not guilty of the offence under the Gangsters Act and

that he 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 applicant is in jail since 14.06.2023.

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

7. 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 applicant to the effect that while on bail in this case the applicant 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 applicant is entitled to be released on bail. Accordingly, the bail application is allowed.

8. Let the applicant- Abhay Thathera @ Arvind, involved in the aforesaid case, be released on bail on his 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 applicant shall not tamper with the prosecution evidence;

(ii) the applicant shall not pressurize the prosecution witnesses;

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

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

9. 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 :- 7.11.2023
SKT/-

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