

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41595 of 2023

Applicant :- Guddu Kumar Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Brijesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. submits that instructions have been received and has no objection in case the bail application is heard on merits.

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

3. It is submitted by learned counsel for the applicant that there are three cases shown in the gang chart against applicant, out of which in two cases i.e. Case Crime Nos.67 of 2021 and 157 of 2021 applicant has been convicted and in Case Crime No.188 of 2021, he is on bail. Copies of the aforesaid orders are annexed as Annexure no.3 to the affidavit. It is the submission of learned counsel for the applicant that applicant neither the gang leader or organizer or member of the gang and the provision of Gangster Act may not be applicable in the facts and circumstances of the case. Applicant is languishing in jail since 12.9.2021 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial. In the first information report, the allegations are vague in nature and no specific instance to the effect that the applicant is member or leader or organizer of a Gang has been disclosed and as such the factual foundation under the Gangster Act is not available.

4. Learned A.G.A. for the State has opposed the prayer for bail but does not dispute the factual matrix of the case.

5. Having heard learned counsel for the parties, it is evident that the provision of Gangster Act has been invoked against the applicant on the basis of three criminal cases. Learned A.G.A. has not produced any material to demonstrate that the applicant comes within the definition of "Gangster" and "Gang" under U.P. Gangsters and Antisocial Activities (Prevention) Act, 1986. Mere

pendency of criminal case may not ipso facto invoke provisions of U.P. Act No.7 of 1986. Criminal history of the applicant has been adequately explained.

6. Learned A.G.A. has not shown any other criminal history of the applicant.

7. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned A.G.A. and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

8. Let the applicant **Guddu Kumar Mishra** involved in Case Crime No.298 of 2021 (G.T. No.602 of 2022), under Section 3(1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station Bankata, District Deoria be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

- i. The applicant will not tamper with the evidence during the trial.
- ii. The applicant will not pressurize/intimidate the prosecution witness.
- iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/ or the applicant shall make himself available for interrogation by a police officer as and when required.
- iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
- v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.
- vi. The applicant shall not leave India without the previous permission of the Court.
- vii. In the event, the applicant changes his residential address, the applicant shall inform the court concerned about new residential address in writing.

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

Order Date :- 19.10.2023

D. Tamang