Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42718 of 2023

Applicant :- Suresh Pal Singh Tomar
Opposite Party :- State of U.P.
Counsel for Applicant :- Atharva Dixit,Sudarshan Singh
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. By order dated 04.02.2023, the S.S.P. Bareilly, was directed to file his personal affidavit, as to why, the counter affidavit has not been filed despite time being granted and what action has been taken against the erring officials.

4. Today S.S.P. Bareilly has filed his personal affidavit indicating the fault of Sri Om Prakash Gautam, Inspector of Bareilly District and Inspector In-charge, Police Station Fatehganj and enquiry against them has been initiated. Counter affidavit has been filed in the present case.

5. Accordingly, this Court does not proceed further in respect of the delay in filing of the counter affidavit.

6. It is submitted by learned counsel for the applicant that there are two cases shown in the gang chart against applicant, in which cases he is already on bail, the bail orders are annexed as Annexure no.2 to the supplementary affidavit and Annexure-1 to the second supplementary affidavit. It is also submitted that other criminal history of the applicant has been explained in paragraph 5 of the supplementary 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 15.01.2023 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.

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

7-A. In the counter affidavit filed by learned A.G.A. for the State general allegations have been made against the applicant. The material particulars of the evidence and other material available against the applicant has neither been pleaded nor annexed. The material available before the District Magistrate/Commissioner for proceeding against the applicant under the Gangster Act has not been produced before this Court nor there is any pleading in the counter affidavit to this effect. It is not shown by the opposite party by way of specific instances and particulars as to when on account of the applicant persons have not come forward to lodge a case against the applicant. No particulars or instances have been shown in the counter affidavit where on account of the applicant the prosecution witnesses have become hostile or have refuse to give evidence against the applicant. General allegations without material particulars and evidence against the applicant could not by itself a ground to deny bail to the applicant in view of Article 21 of the Constitution of India.

8. 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 two criminal cases. However, applicant has been released on bail in the aforesaid 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.

9. The applicant in the present case has been implicated on the basis of the criminal cases detailed in the gang chart. It is not in dispute by learned A.G.A. that the applicant has already been enlarged on bail in the criminal cases showing in the gang chart. Once the applicant has been enlarged on bail in previous criminal cases shown in the gang chart which forms the foundation for lodging of the criminal cases under the Gangster Act. This Court see no valid ground to detain the applicant in custody once the applicant has already been enlarged on bail in the cases shown in

the gang chart.

10. There are two cases shown in the gang chart against the applicant. However, other criminal history (apart from the gang chart) has been pointed out by learned A.G.A. The other criminal cases of the applicant has not been shown in the gang chart. No reasons have been shown by learned A.G.A. for non-inclusion of other criminal history in the gang chart. A separate list of criminal history, in Form No.4, is not attached with the gang chart detailing all the criminal activities of the gang and mentioning all the criminal cases nor abovementioned Form No.4 has been produced by learned A.G.A. before this Court. No material has been placed by learned A.G.A. to demonstrate that the name of the Applicant is entered into gang register kept in the police station concerned. The proceedings under the Gangster Act is required to be initiated by preparation of gang chart mentioning the criminal activities. It is not shown by learned A.G.A. that the details of other criminal cases against the applicant were before the authorities concerned at the time of approval of gang chart. To initiate under the Gangster Act preparation of gang chart is a condition precedent under Rule 5(1) of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021. The gang chart is required to mention details of the criminal activity of the accused. The Commissioner of Police/District Magistrate is to record satisfaction on the basis of the gang chart that the foundation of action under the Gangster Act exists. When the other criminal cases of the Applicant have not been disclosed in the gang chart or Form No.4, then it can be gainfully said that initiation of proceedings under the Act is not on the basis of other criminal history of the applicant, as such other criminal history of the applicant cannot be an impediment to deny bail to the applicant, more particularly when the applicant has been enlarged on bail in previous criminal cases.

11. 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.

12. Let the applicant **Suresh Pal Singh Tomar** involved in Case Crime No.94 of 2023, under Section 2(kha)(1)/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Faridpur, District Bareilly, 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.

13. 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 :- 14.12.2023
S.Prakash

Digitally signed by :-
SHASHI PRAKASH
High Court of Judicature at Allahabad