Court No. - 74
Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49031 of 2023
Applicant :- Mahipal
Opposite Party :- State of U.P.
Counsel for Applicant :- Vivek Kumar Singh,Mayank Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. At the outset learned counsel for the applicants submits that he does not intend to press the instant bail application on behalf of the applicant no. 2-Veerpal.

2. Sri V.K. Tiwari, learned A.G.A., has no objection to such prayer.

3. As prayed for, the instant bail application on behalf of the applicant no. 2 is dismissed as not pressed.

4. Now the bail application is only on behalf of the applicant no. 1 and in his respect the following order is passed.

5. Heard learned counsel for the applicants as well as Sri V.K. Tiwari, learned A.G.A. for the State of U.P. and perused the record.

6. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant no. 1 on bail in Case Crime No. 158 of 2023, under Section 2/3 of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 (for short, the "Gangsters Act"), Police Station Jarifnagar, District Budaun during the pendency of the trial.

7. Learned counsel for the applicants submits that according to the gang chart, one case is shown against the applicant no. 1 and in the said case the applicant no. 1 has been enlarged on bail. It is next contended that apart from the case mentioned in the gang chart, the applicant no. 1 is involved in three cases. Out of the said cases, in two cases he has been granted bail and in the third case i.e. Case Crime No. 237 of 2014, under Section 3 U.P. Control of Goondas Act, Police Station Jarifnagar, District Budaun the proceedings stand concluded.

8. 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 no. 1 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.

9. It is also submitted that considering the facts of the case, as stated above, there are reasonable grounds for believing that the applicant no. 1 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 no. 1 is in jail since 23.02.2023.

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

11. 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 applicant no. 1 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 no. 1 is entitled to be released on bail. Accordingly, the bail application is allowed.

12. Let the applicant no. 1- Mahipal, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

(i) the applicant no. 1 shall not tamper with the prosecution evidence;

(ii) the applicant no. 1 shall not pressurize the prosecution witnesses; and,

(iii) the applicant no. 1 shall appear on each and every date fixed by the trial court.

13. 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 :- 24.11.2023
SKT/-

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