Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48415 of 2023

Applicant :- Kishanpal
Opposite Party :- State of U.P.
Counsel for Applicant :- Jitendra Kumar Shishodia,Gyan Chandra
Counsel for Opposite Party :- G.A.,Manish Pandey,Radhey Krishna Pandey

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State 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 two cases shown in the gang chart against applicant, in which cases in Case Crime No. 68 of 2014, under Section 302 and 506 I.P.C., he is already on bail and in Case Crime No. 372 of 2020, under Section 307 I.P.C., he has been acquitted. It is also submitted that other criminal history of the applicant has been explained in paragraph No. 9 of 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 28.04.2021 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 and perused the record.

6. The following facts, circumstances and material are considered while considering the bail application of the

applicant:-

a) The provision of Gangster Act has been invoked against the applicant on the basis of two criminal cases shown in the gang chart. However, the applicant has already been released on bail in the previous criminal cases.

b) No material particulars have been shown by the opposite party to demonstrate that the applicant in any manner was involved in violence or threat or show of violence or intimidation or coercion with the object of disturbing public order. No specific instances in this respect have been shown by opposite parties. No particulars have been shown by the learned A.G.A. for the State to demonstrate the date and time when the applicant can be said to be involved in violence or threat or show of violence or intimidation or coercion with the object of disturbing public order.

c) No material particular has been placed by learned A.G.A. for the State to demonstrate that applicant is involved in antisocial activity (as enumerated under section 2(b) of the U.P. Act No. 7 of 1986) for gaining any undue temporal, pecuniary, material or another advantage for himself or any other person.

d) Learned A.G.A. for the State has not shown any material and particulars that the applicant is a person who abets or assists in the activities of a gang enumerated in Section 2(b) of the Gangster Act, whether before or after the commission of such activities. No material or circumstances has been shown by learned A.G.A. for the State that applicant harbours any person who has indulged in such activities.

e) The special rules of evidence under Section 4 of U.P. Act No. 7 of 1986 are applicable for the purpose of trial and punishment of offences under the said Act. At the stage of bail the special rules of evidence cannot be pressed unless the foundational facts have been demonstrated by the prosecution.

f) The sentence under Section 3 of the U.P. Act No. 7 of 1986 is minimum of two years and may extend to 10 years. No special circumstances have been shown by learned A.G.A. for the State to demonstrate that the applicant would be entitled to a conviction of more than 7 years at the end of the trial.

g) Mere pendency of a criminal case may not ipso facto invoke the provisions of U.P. Act No. 7 of 1986. Learned A.G.A. for the State 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.

h) Criminal history of the applicant has been adequately explained.

i) The applicant is in jail since 28.04.2021.

7. Learned A.G.A. for the State has not been able to demonstrate that there are reasonable grounds to belief that the applicant is guilty for an offence under U.P. Act No. 7 of 1986. No circumstance or reasonable apprehension has been shown on behalf of State that the applicant is likely to commit any offence while on bail. It is not the case of the State that after releasing on bail in previous criminal cases shown in the gang chart or otherwise, the applicant has misused the bail or indulged in any crime while on bail in previous criminal cases.

8. In the case of **Prabhakar Tewari Vs. State of U.P. and another, 2020 (11) SCC 648,** the Hon'ble Supreme Court has observed that pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail.

9. In so far as criminal antecedents of the applicant is concerned, it is not the case of the State that applicant might tamper with or otherwise adversely influence the investigation, or that he might intimidate witnesses before or during the trial. The State has also not placed any material that applicant in past attempted to evade the process of law. If the accused is otherwise found to be entitled to bail, he cannot be denied bail only on the ground of criminal history, no exceptional circumstances on the basis of criminal antecedents have been shown to deny bail to accused, hence, the Court does not feel it proper to deny bail to the applicant just on the ground that he had criminal antecedent.

10. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51.** Learned A.G.A. for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

11. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating

witnesses and the like have been shown by learned A.G.A. for the State.

12. Learned A.G.A. for the State has not shown any material or circumstances that the accused/applicant is not entitled to bail in larger interests of the public or State.

13. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned A.G.A. for the State 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.

14. Let the applicant-**Kishanpal** involved in Case Crime No. 168 of 2021, under Section 2/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Jasrana, District Firozabad 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 residential address, the applicant shall inform the court concerned about new residential address in writing.

15. In case of breach of any of the above condition, the

prosecution shall be at liberty to move bail cancellation application before this Court.

16. Any observation made in the present order shall not affect the investigation or the trial court proceedings.

Order Date :- 1.12.2023
VMA

Digitally signed by :-
VISHWA MOHAN ARORA
High Court of Judicature at Allahabad