Court No. - 77

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50324 of 2023

Applicant :- Vijay Nishad
Opposite Party :- State of U.P.
Counsel for Applicant :- Swetashwa Agarwal,Swayamanand Sisodiya
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Supplementary affidavit filed today is taken on record.

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

3. The present application under Section 439 Cr.P.C has been filed seeking bail in Case Crime No.265 of 2023 under Section 3(1) of the U.P. Gangster and Antisocial Activities (Prevention) Act, 1986 Police Station Rajghat District Gorakhpur.

4. Learned counsel for the accused-applicant submitted that the applicant is innocent and has been falsely implicated in the instant case due to ulterior motive. According to the gang-chart (Annexure No.2), one case is shown against the accused-applicant, in which he has been enlarged on bail. Apart from the cases shown in the gang chart the applicant has criminal history of four more cases which are explained in paragraph-4 of the supplementary affidavit. The applicant is languishing in jail since 30.06.2023, in case he is

enlarged on bail, he will not misuse the liberty of bail and will cooperate in the trial proceedings.

5. On the other hand, learned AGA has opposed the prayer for bail but could not controvert the aforesaid factual matrix.

6. Considering the facts and circumstances of the case and taking into account that the accused-applicant has been enlarged on bail in the cases shown in the gang-chart, the applicant has explained his criminal history and without expressing any opinion on the merit of the case, it would be appropriate to enlarge the accused-applicant on bail.

7. The bail application is allowed.

8. Let applicant-Vijay Nishad be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on

each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The applicant shall also furnish an undertaking from the sureties that the properties (movable/immovable) which are the basis of accepting the surety, shall not be disposed of by them till the conclusion of trial.

(vi) The applicant shall also give an undertaking to the effect that

he will not change his address without prior intimation to the trial court concerned.

(Renu Agarwal,J.)

Order Date :- 12.12.2023
Nadeem

Digitally signed by :-
NADEEM AHMAD
High Court of Judicature at Allahabad