

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49855 of 2023

Applicant :- Mukim And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Sumit Goyal

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 applicants and learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicants that there are two cases shown in the gang chart against each of the applicants, in which cases they are already on bail, the bail orders are annexed as Annexure nos.3 and 4 to the affidavit. It is also submitted that other criminal history of the applicant has been explained in paragraph 8 of the affidavit. It is the submission of learned counsel for the applicants that applicants 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. Applicants are languishing in jail since 31.10.2023 and in case they are released on bail, they 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 applicants are 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 each applicant on the basis of two criminal cases. However, applicants have been released on bail in the aforesaid cases. Learned A.G.A. has not produced any material to demonstrate that the applicants come 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 applicants has been adequately explained.

6. The applicants 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 applicants has already been enlarged on bail in the criminal cases showing in the gang chart. Once the applicants have 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 applicants in custody once the applicants have already been enlarged on bail in the cases shown in the gang chart.

7. There are two cases shown in the gang chart against each of 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 applicants have 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 Applicants are 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 applicants 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 Applicants 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 applicants, as such other criminal history of the applicants cannot be an impediment to deny bail to the applicants, more particularly when the applicants have been enlarged on bail in previous criminal cases.

8. 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 applicants have made out a case for bail. The bail application is allowed.

9. Let the applicants **Mukim, Amjad and Buddhan** involved in Case Crime No.459 of 2023, under Section 2/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Behat, District Saharanpur 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 applicants will not tamper with the evidence during the trial.
- ii. The applicants will not pressurize/intimidate the prosecution witness.
- iii. The applicants will appear before the trial court on the date fixed, unless personal presence is exempted and/ or the applicants shall make themselves

available for interrogation by a police officer as and when required.

iv. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

v. The applicants 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 applicants shall not leave India without the previous permission of the Court.

vii. In the event, the applicants change his residential address, the applicants shall inform the court concerned about new residential address in writing.

10. 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 :- 6.12.2023

Bhaskar