

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53313 of 2023

Applicant :- Islam

Opposite Party :- State of U.P.

Counsel for Applicant :- Satendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A for the State.

This is second bail application of the applicant.

The first bail application of the applicant was rejected on 07.04.2023 by the coordinate Bench of this Court by the following order :-

"1. Heard learned counsel for the applicant and the learned A.G.A for the State.

2. The instant bail application has been filed on behalf of the applicant, Islam, with a prayer to release him on bail in Case Crime No. 558 of 2022, under Section 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, Police Station- Roravar, District- Aligarh, pendency of trial.

3. The applicant has been implicated under section 2/3 of U.P. Gangsters and Anti-social Activities (Prevention) Act, 1986. There are 3 cases shown against the applicant in the gang chart as follows:-

(i) Case crime No. 257 of 2022, under sections- 392 and 411 IPC, Police Station- Rorawar, District Aligarh;

(ii) Case Crime No. 316 of 2022, under Sections- 379 and 411 IPC, Police Station- Rorawar, District Aligarh; and

(iii) Case Crime No. 403 of 2022, under Sections- 379 and 411 IPC, Police Station- Saasni Gate, District Aligarh.

4. Counsel for the applicant submits that the applicant has been enlarged on bail in all the 3 cases shown in the gang chart. He has pointed out to the bail orders passed by the courts below brought on record as Annexures 3, 4 and 5 to the bail application. He has submitted that the applicant has been falsely implicated in this case by the police and this bail application was rejected by the court below without proper application of mind. The applicant is in jail since 18.12.2022 .

5. *Learned counsel for the applicant has filed a supplementary affidavit. Along with the supplementary affidavit criminal history of 19 cases of the applicant has been brought on record which includes the 3 cases shown in the gang chart. Learned counsel for the applicant has explained that most of the cases have been registered against the applicant by the police station Tappal, District Aligarh. He submits that the applicant is resident of Mohalla Kazipada, District Aligarh which falls under the police station Tappal. Whenever any case does not gets worked out by the police station aforesaid the applicant gets implicated because of his earlier implications. It has been finally submitted that the applicant is on bail in all the cases shown in the criminal history against him.*

6. *Learned A.G.A has vehemently opposed the bail application and submitted that keeping in view the long criminal history of the applicant does not deserves to be enlarged on bail.*

7. *After going through the material placed before this Court, this Court finds that the applicant has been implicated earlier under Gangsters Act twice, before implication in the present case. In his criminal history most of the cases are of theft, loot and recovery of looted or stolen goods. There is one implication of the applicant in the case of murder also. Therefore, it is not a fit case for grant of bail to the applicant at the stage.*

8. *The bail application is rejected.*

9. *Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of six months. "*

Learned counsel for the applicant submits that the charges have been framed only on 09.06.2023. Thereafter no witness is appearing and non-bailable warrants are being issued against co-accused persons. Bail was denied to the applicant only on account of his criminal history. The applicant is in jail since 18.12.2022.

On the other hand learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of **Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021**; considering 5-6 times overcrowding in jails over and above their capacity by the under trials 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.

Let the applicant, Islam, involved in Case Crime No. 558 of 2022, under Section- 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Roravar, District- Aligarh, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant will report his presence before the Police Station- Tappal, District- Aligarh in first week of every second month till the trial against the applicant is concluded.

(iii) 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.

(iv) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(v) 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.

(vi) 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.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 12.12.2023

Rohit