

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10553 of 2023

Applicant :- Moh. Shahnwaj And Another

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home, Lko.

Counsel for Applicant :- Abhinandan Kumar Pandey, Vimlesh Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Counter affidavit filed by learned AGA is taken on record.
2. Heard Shri Abhinandan Kumar Pandey, learned counsel for the applicants, Shri Ranvijay Singh, learned AGA for the State and perused the record.
3. The present bail application has been filed by the applicants with a prayer to enlarge them on bail in Case Crime No.0352 of 2023, under Section 2/3 of U.P. Gangster (Prevention of Anti social Activities) Act, 1986, Police Station Salon, District Raibareli.
4. It is contended by learned counsel for the applicants that the applicants are innocent and have been falsely implicated in Gangster Act on the basis of three cases and in all the three cases, the applicants have been enlarged on bail. The bail orders are Annexures 3 to 8 to the affidavit filed in support of bail application. In other criminal cases shown against the applicants, neither charge sheet or summons have been received nor the applicants have been arrested, which has been explained in para 7 of the affidavit. Except the cases shown in the gang chart, the applicants have no other criminal history. The applicants are in jail since 03.07.2023.
5. Lastly, it is contended by the learned counsel for applicants that the applicants shall not abscond and will fully cooperate in the proceedings. The applicants shall not tamper with the evidence nor influence the witnesses in any manner.
6. Learned AGA opposed the prayer for bail but could not dispute the aforesaid submissions of learned counsel for the applicants that three cases have been shown in the gang chart and in all three cases the applicants have been bailed out.
7. Considering the submissions of learned counsel for parties, material available on record, contents of F.I.R., other relevant documents, nature of offence, gang chart; argument that on the basis of three cases, gangster Act has been imposed and in all the three cases, the applicants have been enlarged on bail; argument that except these three cases, the applicants have no other criminal history, therefore, this Court finds that condition of Section 19(4) of the Gangster Act are properly complied with, the applicants

are not guilty of such offence and are entitled to be released on bail.

8. Let the applicants, **Moh. Shahnwaj, Shoyab @ Shoyab** be released on bail in the above case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants 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 applicants fail to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants 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 applicants 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 them in accordance with law.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 16.11.2023

Pks