

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11398 of 2023

Applicant :- Sumit

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko.

Counsel for Applicant :- O.P. Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Rejoinder affidavit filed by learned counsel for applicant is taken on record.

2. Heard Shri O.P. Tiwari, learned counsel for the applicant as well as Shri Divyanshu Pratap Singh, Brief Holder for the State and perused the record.

3. The present bail application has been filed on behalf of the applicant **Sumit** in Case Crime No. 82 of 2023, under Sections 3(1) U.P. Gangster and Anti Social Activities (Prevention) Act, Police Station - Aagain, District - Unnao, with the prayer to enlarge him on bail.

4. Learned counsel for the applicant has submitted that on the basis of two cases mentioned in gang chart (as also mentioned in para-5 of the bail application), the applicant has been implicated in the present case. He further submitted that the applicant is on bail in the said cases mentioned in the gang chart (bail orders are annexed as Annexure No. 3 to the bail application). He further submitted that except for the aforesaid cases, the applicant has criminal history of 6 cases, which has been explained by him in paragraph-8 of the bail application and paragraph-9 of the rejoinder affidavit filed today before the Court, and he has been granted bail in all the six cases (bail orders are annexed as Annexure No. 4 to the bail application and Annexure No. 1 to the Rejoinder affidavit).

5. Learned counsel for the applicant submitted that the co-accused namely Arjun, Sahil and Ravi have been granted bail in Criminal Misc. Bail Application No. 7702 of 2023 vide order dated 16.06.2023, Criminal Misc. Bail Application No. 8111 of 2023 vide order dated 30.06.2023 and Criminal Misc. Bail Application No. 7582 of 2023 vide order dated 13.06.2023 respectively.

6. Learned counsel for applicant further submitted that the case of the applicant is at par with the case of the co-accused and is covered with the factum of parity, as such the applicant is also entitled to be enlarged on bail. He further stated that the applicant is languishing in jail since

30.05.2023. He further submitted that the applicant, in case of being enlarged on bail, will not involve in any illegal activities in the future and will not misuse the liberty of bail.

7. Learned A.G.A. has opposed the prayer for grant of bail, but has fairly conceded that the applicant is on bail in the all the three cases mentioned in the gang chart and the co-accused Arjun, Sahil and Ravi have already been granted bail.

8. 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, considering the period of incarceration, the fact that the applicant has been granted bail in the all the cases mentioned in the gang chart, the argument that co-accused Arjun, Sahil and Ravi have already been granted bail, this Court finds that conditions of Section 19(4) of the Gangster Act are properly complied with, the applicant is not guilty of such offence, therefore, he is entitled to be released on bail.

9. Accordingly, the bail application is **allowed**.

10. Let the accused/applicant **Sumit** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned subject to 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 her 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.

11. 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 :- 28.10.2023

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