

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11918 of 2023

Applicant :- Awadhesh Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Govt. Civil Sectt. Lko

Counsel for Applicant :- Manmohan Singh, Dilip Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved on behalf of the accused-applicant/**Awadhesh Singh** for grant of bail, in Case Crime No.794 of 2008, under Section 3(1) of the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 Police Station Kadipur, District Sultanpur during pendency of trial.
5. Learned counsel for accused-applicant while pressing the bail application submits that the accused-applicant has been falsely implicated in the instant case as well as in the three cases mentioned in the gang chart. However, in all these cases mentioned in the gang chart, he has been released on bail and the bail orders with regard to these three cases have been placed as Annexure No.3 to this bail application and apart from the above mentioned cases, the applicant is not involved in any other criminal case.
6. It is further submitted that initially the applicant was not aware of the pendency of the instant case before the special court, however, when the process of Section 82 and 83 Cr.P.C. was issued against him, he approached a Coordinate Bench of this Court challenging the same and vide order dated 01.11.2012, his application moved under Section 482 Cr.P.C. was dismissed, however, under the advice of his counsel, he moved a personal exemption application before the special

court and the same was acknowledged and thereafter his various personal exemption applications were accepted and his personal appearance was exempted and he was advised by the counsel engaged at the level of special court to continue appearing before the special court, but when he could not appear before the special court on some dates, non bailable warrant and process of Section 82 and 83 Cr.P.C. was again issued and when the same was attempted to be executed, he himself contacted the local police for seeking sometime to surrender before the special court, but he was arrested.

7. It is also submitted that the applicant is in jail since 20.08.2023 and undertakes that he shall remain present before the special court or to any other court where the case would be transferred and would not seek any adjournment especially when the prosecution witnesses would be in attendance and having regard to the fact that only on the basis of three criminal case(s), the provisions of Gangster Act has been invoked against the applicant and the material which has been made the basis of lodging the first information report in this case is not sufficient enough to raise a presumption that the applicant is either guilty of the offences mentioned in the gang chart or may commit the same offences again if the facility of bail is granted to him.

8. Learned A.G.A. opposes the prayer for bail of the applicant, but could not confront the factual submissions made by the learned counsel for the accused-applicant.

9. Having heard learned counsel for the parties and having perused the record, it is evident that the provisions of Gangsters Act has been invoked against the applicant on the basis of three cases mentioned in the gang chart, however, in all the cases mentioned in the gang chart he has been released on bail by trial court. Significantly the bail applications of the applicant has been granted by the competent criminal courts in all the three cases in the month of September, 2023 while the cognizance with regard to the instant case (Gangster Act) has been taken way back in the year 2009. Various submissions have been raised by learned counsel for the applicant in order to show that the absence of the applicant before the special court was not intentional and in fact he was acting under the advice of his counsel engaged at the level of the special court. Be that as it may, the situation, which appears to be admitted to the parties is that the applicant has been granted bail in all those cases on the basis of which provision of Gangster Act has been invoked and the bail in those cases have been granted in the month of September, 2023, thus without going into causes of non appearance of the applicant before the special court and also

believing on the assurance given by learned counsel for the applicant that the applicant would continue to remain present before the special court on each and every date and will not seek any adjournment when the prosecution witness would be in attendance, in the considered opinion of this Court, facility of bail may be extended to the applicant. The applicant is in jail in this case since 20.08.2023. The presence of the applicant could be secured before the trial court by placing adequate conditions/restrictions.

10. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

11. Let the accused-applicant/**Awadhesh Singh** involved in aforesaid case be released on bail on furnishing a personal bond with **two sureties** in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall file an undertaking before the special court that he would remain present on all the dates fixed in the case pending before the court below and his personal exemption would be exempted only when the circumstances are beyond the control of the applicant and in the case of attendance of the prosecution witness even if the applicant is not personally present, he will instruct his counsel to do all what is necessary for the further progress of the case including cross examination of the prosecution witnesses and the violation of this condition alone shall be a sufficient ground for the special court to cancel the facility of bail granted by this Court.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

accepted.

14. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 12.10.2023

Anupam S/-