

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11981 of 2023

Applicant :- Parvez Khan

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

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Ramakar Shukla, learned counsel for the applicant, Shri Lalji Maurya, brief holder for Shri G.D. Bhatt, learned AGA for the State and perused the record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant seeking enlargement on bail, in Case Crime No.119 of 2022, under Section 2/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Kotwali Nagar, District Pratapgarh.

3. Learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. He is not a member of any criminal gang. As per the gang chart, three cases have been shown against the applicant in gang chart and in all the three cases, the applicant has been enlarged on bail by the court below. The bail orders are Annexures 3 to 5. It is further contended that the criminal history of four more cases imposed upon the applicant has been explained in paras 11 to 14 of the affidavit and in all the cases, the applicant has been enlarged on bail, which bail orders are Annexures 11 to 14. Further criminal history of four cases has been explained in paras 2 to 5 of supplementary affidavit filed on 26.09.2023 and submitted that in all cases shown the applicant is on bail.

4. Learned counsel submitted that the other co-accused Abhay Singh, Aakil, and Puneet Prajapati having identical role have been granted bail by coordinate Bench of this Court in Criminal Misc. Bail Application Nos.7558 of 2023, order dated 13.06.2023; 8108 of 2023 order dated 30.06.2023 and 8184 of 2023 vide order dated 04.07.2023 as such the applicant is also liable to be released on bail. Lastly, it is contended by the learned counsel for applicant that the applicant shall not abscond and will fully cooperate in the proceedings. The applicant shall not tamper with the evidence nor influence the witnesses in any manner. The applicant is in jail since 08.02.2023.

5. On the other hand, learned A.G.A. opposed the prayer for bail, but could not dispute the aforesaid facts as stated

by learned counsel for the applicant that in all the aforementioned cases, the applicant have been granted bail and other co-accused have been granted bail.

6. 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 and the fact that applicant is on bail in all four cases shown against the applicant in the gang chart; argument that other co-accused having similar role have been granted bail therefore, this Court finds that condition 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.

7. Let the applicant, namely, **Parvez Khan** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the 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 him 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.

8. 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 :- 7.12.2023

Pks