

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12704 of 2023

Applicant :- Bhupendra Kumar Dwivedi

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

Counsel for Applicant :- Avnish Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Avnish Kumar Tiwari, learned counsel for the applicant as well as Shri Avishesh Kumar Singh, A.G.A. for the State and perused the record.
2. This bail application has been filed seeking release of accused/applicant- Bhupendra Kumar Dwivedi on bail, in Case Crime No.300 of 2023, under Sections 2/3 U.P. Gangster and Anti Social Activities (Prevention) Act 1986, Police Station Kachhauna, District Hardoi.
3. Learned counsel for the applicant submitted that on the basis of two cases, Gangster Act has been imposed on the applicant. He has further submitted that no case is made out u/s 2/3 of U.P. Gangster and Anti Social Activities (Prevention) Act 1986, against the applicant on the basis of two cases the details of which are annexed as Annexure No.3 & 4 to the application in the gang chart and he has falsely been implicated in the present case and as such the applicant entitled to be enlarged on bail.
4. Learned counsel further submitted that the applicant has no criminal history except the two cases shown in the Gang Chart and he is languishing in jail since 20.08.2023.
5. Learned A.G.A. has opposed the prayer for grant of bail, but could not dispute the contention made by the learned counsel for the applicant.
6. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, looking into the fact that the applicant has no criminal history except the two cases shown in the Gang Chart in which bail has been granted and he is languishing in jail since 20.08.2023, the argument that the condition of Section 19(4) of the Gangster Act are properly complied with, I find it to be a fit case for

grant of bail.

7. Accordingly, the bail application is allowed.

8. Let the accused/applicant- **Bhupendra Kumar Dwivedi** 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.

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 :- 30.10.2023

Manoj K.