

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12903 of 2023

Applicant :- Kanhaiya

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

Counsel for Applicant :- Alok Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter, including up-to-date case diary, and the charge-sheet has been filed in this case.
2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Kanhaiya** for grant of bail in Case Crime No.0017 of 2023, under Sections 2/3 of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 lodged at Police Station Baghauli, District Hardoi, during trial.
4. Learned counsel for the accused-applicant, while pressing the bail application, submits that the applicant has been falsely implicated in this case as well as in the three cases mentioned in the gang-chart, however, in all the three cases, mentioned in the gang-chart, the applicant has been enlarged on bail by the coordinate Benches of this Court as well as by the trial Court and copies of bail orders have been placed collectively as Annexure-3 to the affidavit filed in support of the bail application. It is further submitted that apart from above, two more cases have been shown as criminal history of the applicant one of them relates to Case Crime No.808 of 2022 in which he has been granted bail by the trial Court and the bail order with regard to that has also been placed along with Annexure-3 to the affidavit filed in support of the bail application and with regard to second case i.e. Case Crime No.0672 of 2006 it is submitted that the applicant was convicted by the trial Court, however, on appeal being preferred by him, the appeal has been

admitted and he has been granted bail by this Court while suspending the sentence, moreover, two cases, which have been shown as criminal history of the applicant, have not been considered by the appropriate authorities who have approved the gang-chart for the purpose of invocation of provisions of the Gangsters Act and, therefore, these two cases would not have any bearing on the fate of the instant bail application with regard to the Gangsters Act as the same have not been considered for the purpose of slapping the provisions of the Gangsters Act. The applicant has been languishing in jail in this case since 03.10.2022 and there is no apprehension that after being released on bail, he may flee from the course of law or may otherwise misuse the liberty.

5. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled to be released on bail.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that on the basis of three criminal cases the provisions of the Gangsters Act have been invoked against the applicant, however, in all these three cases, the applicant has been enlarged on bail by this Court as well as by the trial Court. Criminal history of two other cases has been alleged, however, in these two cases also, the applicant has been enlarged on bail by the trial Court trial Courts. The two cases, which have been shown as criminal history of the applicant, have not been considered by the appropriate authorities who have approved the gang-chart for the purpose of invocation of provisions of the Gangsters Act and, therefore, these two cases would not have any bearing on the fact of the instant bail application with regard to the Gangsters Act as the same have not been considered for the purpose of slapping the provisions of the Gangsters Act. The applicant has been languishing in jail in this case since 03.10.2022. The presence of the applicant may be secured before the trial court by placing adequate conditions.

7. 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, thus, **allowed**.

8. Let the accused/applicant- **Kanhaiya**, involved in above-mentioned case, be released on bail on his 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 not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

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

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

10. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

11. 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 on the merits of the case.

.

[Mohd. Faiz Alam Khan, J.]

Order Date :- 6.11.2023

MVS/-