

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13342 of 2023

Applicant :- Mukesh Kumar Yadav

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

Counsel for Applicant :- Vivek Chandra

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Vivek Chandra, learned counsel for the applicant, Shri Shani Pratap Singh, 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.0851 of 2023, under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Kotwali Nagar, District Barabanki.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated in the instant case. In the gang chart five cases have been shown against the applicant and in all the five cases, the applicant has been enlarged on bail. The bail orders have been annexed as Annexures 3 to 7 to the affidavit filed in support of bail application. It is submitted that the other criminal history of the applicant has been explained in para 9 of the bail application in which four cases have been shown and in all cases, the applicant has been granted bail. The bail orders are annexed as Annexures 8 to 11 to the affidavit filed in support of bail application.

4. Learned counsel further contended that the other co-accused namely Dharmendra Singh @ Sonu and Kuldeep Yadav having similar role have been granted bail by this Court in Criminal Misc. Bail Application Nos.12682 of 2023 and 12374 of 2023 vide orders dated 30.10.2023 and 18.10.2023 respectively, therefore, the applicant is also entitled 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 languishing in jail for more than a year i.e. since 11.10.2022.

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 co-accused Dharmendra Singh @ Sonu and Kuldeep Yadav have been granted bail and in all cases shown in the gang chart, the applicant has been enlarged on 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, argument of long period of incarceration; argument that five cases have been shown against the applicant and in all the cases, the applicant has been enlarged on bail, argument that co-accused Dharmendra Singh @ Sonu and

Kuldeep Yadav having identical role as that of applicant have been granted bail by this Court, therefore, this Court finds that condition of Section 19(4) of the Gangster Act is properly complied with, the applicant is not guilty of such offence, therefore, the applicant is entitled to be released on bail.

7. Let the applicant, namely, **Mukesh Kumar Yadav** 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 :- 8.11.2023

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