**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14937 of 2023

**Applicant :-** Avadhesh

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

**Counsel for Applicant :-** Manjusha,Gangeshwar Pandey,Mrs.Suniti Sachan

**Counsel for Opposite Party :-** G.A.

**Hon'ble Brij Raj Singh,J.**

1. Heard Ms. Rashi Sachan, Advocate holding brief of Ms. Suniti Sachan, learned counsel for the applicant, Shri Abhishek 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.0439 of 2023, under Section 2(b) (i)/3 of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station Haidrabad, District Lakhimpur Kheri.

3. Learned counsel for the applicant contends that on the basis of single case, Gangster Act has been imposed against the applicant. In the said case, the applicant has been granted bail by the court below. The bail order is Annexure 3 to the bail application. The applicant is innocent and is not a member of any gang. He has been falsely implicated in the instant case. It is submitted that the applicant has no other criminal antecedents to his credit.

4. 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 16.07.2023.

5. On the other hand, learned A.G.A. opposed the prayer for bail, but could not dispute the aforesaid fact as stated by learned counsel for the applicant that in single case shown against the applicant, he is on bail and has no other criminal history.

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 in single case shown against the applicant in the gang chart, he has been granted bail; argument that no other criminal case is pending against the applicant, 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, he is entitled to be released on bail.

7. Let the applicant, namely, **Avadhesh,** 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 :-** 18.12.2023

Pks

Digitally signed by :-
POOJA SETH
High Court of Judicature at Allahabad,
Lucknow Bench