

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15180 of 2023

Applicant :- Shiva And Another

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Pooja Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Ms. Pooja Yadav, learned counsel for the applicant as well as learned A.G.A for the State and perused the record.

2. The present bail application has been filed on behalf of the applicants namely **Shiva and Murgesh** in Case Crime No. 267 of 2023, under Sections 3(1) U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986, Police Station-Kotwali Nagar, District- Ayodhya, with the prayer to enlarge them on bail.

3. Learned counsel for the applicants has submitted that on the basis of three cases in the gang chart (as also mentioned in para-5 of the bail application), the applicants have been implicated in the present case. He further submitted that the applicants have already been granted bail in two cases mentioned in the gang chart (bail orders are annexed as Annexure No. 3 and 4 to this bail application) which are as follows:-

(i) Case Crime No. 814 of 2022, under Sections 379, 411 I.P.C, Police Station Kotwali Nagar, District Ayodhya.

(ii) Case Crime No. 683 of 2022, under Sections 379, 411 I.P.C, Police Station Kotwali Nagar, District Ayodhya.

4. Learned counsel for applicants has submitted that in the third case mentioned against the applicants in the gang chart (Case Crime No. 522 of 2022, under Sections 379, 411 I.P.C, Police Station Bhoganipur, District Kanpur Dehat), the bail applications of the applicants are still pending and they have not been granted bail in the said case. Learned counsel for applicant further submitted that the applicants have no previous criminal history and they have been languishing in jail since 23.12.2022, therefore, on the basis of period of incarceration, the applicants are entitled for bail. He further submitted that applicants, in case of being enlarged on bail, will not involve in any illegal activities in the future and will not misuse the liberty of bail.

5. Learned A.G.A. has opposed the prayer for grant of bail,

but has fairly conceded that the applicants are on bail in the two (out of three) cases mentioned in the gang chart.

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, the argument that the applicants are languishing in jail since 23.12.2022, the argument that except for the three cases mentioned in the gang chart, there is no previous criminal history of the applicants, the argument that the applicants have been granted bail in two cases (out of the three cases in the gang chart) mentioned in the gang chart, the argument of period of incarceration of near about one year, this Court finds that conditions of Section 19(4) of the Gangster Act are properly complied with, the applicants are not guilty of such offence, therefore, they are entitled to be released on bail.

7. Let the applicants, namely **Shiva and Murgesh** be released on bail in the above case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions:-

(i) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants 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 applicants 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 them 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 :- 21.12.2023
DiVYa