Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15433 of 2023

Applicant :- Mohd. Tabsir @ Mohd. Tafsir
Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Secrt. Lko.
Counsel for Applicant :- Hemant Tripathi,Vinayak Tiwari
Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Hemant Tripathi**,** learned counsel for the applicant as well as Shri Akhilesh Srivastava, learned A.G.A for the State and perused the record.

2. The present bail application has been filed on behalf of the applicant **Mohd. Tabsir @ Mohd. Tafsir** in Case Crime No. 1064 of 2023, under Sections 2/3(1) U.P. Gangster and Anti Social Activities (Prevention) Act, Police Station- Kotwali Nagar, District- Sultanpur, with the prayer to enlarge him on bail.

3. Learned counsel for the applicant has submitted that on the basis of two cases mentioned in the gang chart (as mentioned in para-7 of the bail application), the applicant has been implicated in the present case. He further submitted that the applicant is on bail in both the said cases mentioned in the gang chart (bail order is annexed as Annexure No. 3 and 5 to the bail application).

4. Learned counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in this case. Except for the aforesaid two cases, the applicant has criminal history of three cases which has been explained by him in paragraph-7 of the bail application and he is languishing in jail since 05.10.2023. He further submitted that applicant, 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 applicant is on bail in the 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 period of incarceration, the argument that the applicant is on bail in the two cases mentioned in the gang chart, this Court finds that conditions of Section 19(4) of the Gangster Act are properly complied with, the applicant is not guilty of such offence, therefore, he is entitled to be

released on bail.

7. Accordingly, the bail application is **allowed**.

8. Let the applicant, namely, **Mohd. Tabsir @ Mohd. Tafsir** 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.

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 :- 22.12.2023
DiVYa

Digitally signed by :-
DIVYA SINGH
High Court of Judicature at Allahabad,
Lucknow Bench