

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9975 of 2024

Applicant :- Mukesh Kumar Verma

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

Counsel for Applicant :- Naveen Kumar Pandey, Kusuma Devi

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

Heard Ms. Kusuma Devi, learned counsel for the applicant, Shri Rajiv Kumar Verma, learned A.G.A.-I for the State and perused the record.

The applicant has moved the present bail application seeking bail in Case Crime No.11/2023, under Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station Naveen Modern Police Thana, District Shrawasti.

The chief plank of the submissions made on behalf of accused is that only on the basis of two cases, which have been made the basis to impose the provisions of Gangster Act against the accused, in which the applicant has already been granted bail, copies of which have been filed as Annexure Nos. 3 & 4 of the affidavit filed in support of the bail application, the provisions of the Act have been ill-used by the Police in order to perpetuate the detention of the applicant in jail anyhow even though the offence under the aforesaid Act is not made out. Further submission is that the applicant is not a gangster and has never acted or conducted himself as such. Counsel for the applicant has also tried to demonstrate that the alleged previous offences which are said to have been committed by the applicant can at the most be said to be stray incident of breach of law having no nexus with the definition of a gangster as has been provided in the Act.

Further submission is that as it has been mentioned in paragraph-9 of the affidavit filed in support of the bail application that the applicant has already been released on bail in the cases on the basis of which the provisions of the Act were imposed in the gang chart annexed as Annexure No.2 and only two cases have been shown against the applicant, it shall not be much justified to continue the incarceration of the applicant. Submission is also that the applicant is not guilty of having committed any offence under the Gangster Act.

Several other submissions regarding legality and illegality of the allegations made in the F.I.R. have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused, have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The applicant undertakes that in case he is released on bail he will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that the applicant is in jail since 19.11.2022 and that in the wake of heavy pendency of cases in the courts, there is no likelihood of any early conclusion of trial.

Learned counsel for the applicant further submits that the co-accused Amarchand Sonkar has already been enlarged on bail by this Court vide order dated 07.06.2023 passed in Criminal Misc. Bail Application No.7474/2023 and the case of the present applicant is not on worse footing than the case of the co-accused, as such, the present applicant may also be enlarged on bail by this Court sympathetically.

Learned A.G.A.-I has opposed the prayer for bail but could not dispute the fact of applicant having been released on bail in the criminal cases which have been shown to be the basis of imposing the provisions of the Act.

After perusing the record in the light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that the co-accused has also been enlarged on bail by this Court and the case of the present applicant is not on worse footing than the case of the present applicant and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of U.P. and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the applicant may be enlarged on bail.

The prayer for bail is granted. The application is allowed.

Let the applicant, **Mukesh Kumar Verma**, involved in Case Crime No.11/2023, under Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, 1986, Police Station Naveen Modern Police Thana, District Shrawasti, be enlarged

on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

(1) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(2) The applicant will personally appear on each and every date fixed in the court below and his personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.

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

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

(5) In case, the applicant misuses the liberty of bail 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.

(6) 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

It may be observed that in the event of any breach of the aforesaid conditions, the court below shall be at liberty to proceed for the cancellation of applicant's bail.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merit of the case.

Order Date :- 19.9.2024

Saurabh