

Court No. - 79

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39922 of 2022

Applicant :- Himanshu Tiwari

Opposite Party :- State of U.P.

Counsel for Applicant :- Sandeep Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Shri Sandeep Kumar Mishra, the learned counsel for the applicant, Sri Ghanshyam Mishra, learned Brief Holder for the State and perused the record.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 284 of 2019, under Section 3 (1) Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station -Shivpur, District -Varanasi. The aforesaid case has been registered on the basis of a First Information Report lodged by the Station House Officer of the Police Station against 11 named accused persons, including the applicant, stating that all the accused persons have formed an organized gang and they are engaged in earning their livelihood by committing offences.
3. The gang chart mentions involvement of the applicant in solitary case bearing Case Crime No. 100 of 2019, under sections 147, 148, 149, 302, 34, 120-B I.P.C. and section 7 Criminal Law Amendment Act, P.S. Shivpur, District Varanasi in which the applicant has already been granted bail and copies of the bail order has been annexed as Annexure No. S.A.-1 to the supplementary affidavit filed in support of the bail application.
4. In para 3 of the supplementary affidavit, the applicant's involvement in another case bearing Case Crime No. 30 of 2018, under section 323 I.P.C., P.S. Shivpur, District Varanasi has been disclosed, in which, the applicant has already been granted bail and the copy of the bail order has been annexed as Annexure No. SA-2 to the supplementary affidavit. The learned Counsel for the applicant has submitted that as the applicant has been granted bail in all the predicate offences, he is entitled to be released on bail.
5. The learned AGA has opposed the prayer for grant of bail and he has submitted that allegations against the applicant or of serious nature.

6. Upon scrutinizing the facts of the case in light of the aforesaid law, what prima facie appears at this stage is that there is merely a vague accusation that the applicant is a member of a gang, without any particulars of any act committed by him. The minimum punishment which can be imposed in case of the applicant's conviction is imprisonment for two years. There is nothing on record which may indicate that the applicant is in a position to tamper with the evidence or influence the witnesses or which may give rise to a reasonable apprehension of threat to the witnesses or to give rise to a reasonable apprehension that the applicant will abscond and will not face the trial.

7. The applicant has already been granted bail in all the cases in which he is involved and, therefore, larger interest of the public or the State would not be affected in case the applicant is enlarged on bail.

8. In view of the aforesaid discussion, the bail application is allowed.

9. Let the applicant –Himanshu Tiwari, be released on bail in Case Crime No. 284 of 2019, under Section 3 (1) Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station -Shivpur, District -Varanasi, on his furnishing a personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:—

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the dates fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application before this Court seeking cancellation of bail.

Order Date :- 15.11.2022

Bhanu