

Court No. - 9

Case :- BAIL No. - 6671 of 2020

Applicant :- Kapil Raidas

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh K. Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. The present application under Section 439 Cr.P.C. has been filed seeking bail in FIR No.0402 of 2019 registered under Section 2/3 U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (for short 'the Gangster Act') Police Station Baghauli, District Hardoi against the accused-applicant and two other co-accused

2. From the gang-chart annexed with the bail application, it is apparent that provisions of the Gangsters Act have been invoked on the basis of five cases having been registered against the accused-applicant. On the basis of recovery effected on 14.08.2019 from the accused-applicant, the cases registered against the accused-applicant and other co-accused are as under:-

"Case Crime No.301 of 2019 under Sections 457, 360, 411 IPC, Police Station Baghauli, Hardoi.

Case Crime No.302 of 2019 under Sections 380, 411 IPC, Police Station Baghauli, Hardoi.

Case Crime No.229 of 2019 under Section 380 IPC, Police Station Beniganj, Hardoi.

Case Crime No.199 of 2019 under Sections 457, 380, 411 IPC, Police Station Mallawan, Hardoi.

Case Crime No.297 of 2019, under Sections 457, 380, 411 IPC, Police Station Mallawan, Hardoi."

3. As per the prosecution case from the accused-applicant Rs.6600/-, some packets of cigarettes etc., were recovered from him. The investigating officer has proportioned the amount of Rs.6600/- recovered from the accused-applicant into three thefts alleged to have been committed by the accused. It is very strange that the Investigating Officer did know that a particular amount belonged to a particular theft. How had he identified the particular amount being the amount of theft of a

particular case? On the basis of single recovery which was effected from the accused-applicant on 14.08.2019, the Investigating Officer has made him the accused in five cases and within a period of nine days by filing charge-sheets against him.

4. This is not a single case where the Court has been confronted with bogus, unbelievable and impossible story set up by the police to implicate one accused in several cases and then invoke the provisions of the Gangsters Act. The Court *prima facie* is of the view that the provisions of the Gangsters Act are being misused thoroughly in the State of U.P by the police in this manner.

5. In view thereof, it would be appropriate to direct Superintendent of Police, Hardoi to file his personal affidavit that how the investigating officer came to the conclusion that Rs.1600/- allegedly recovered from the accused-applicant belongs to first case, Rs.1800/- to second case and Rs.3200/- to third case whereas it was a single recovery on 14.08.2019 from the accused.

6. If the Superintendent of Police is of the opinion that on the basis of the offenses for which the provisions of the Gangsters Act have been invoked against the accused-applicant are false, what action he is supposed to take against the investigating officer concerned.

7. It is also required to specifically state that what kind of investigation had been carried out by the investigating officer except alleged recovery from the accused-applicant inasmuch as he had filed the charge-sheets in all five cases within a period of nine days from the date of alleged recovery from the accused-applicant on 14.08.2019.

8. In case, the affidavit is not filed within a period of three weeks from today, Superintendent of Police, Hardoi shall remain present before this Court on the next date of listing of this bail application.

9. List this case on 19.10.2020.

10. Considering the fact and circumstances of the case and the fact that co-accused has been enlarged on bail by the trial Court, it would be appropriate to enlarge him on bail.

11. Let applicant Kapil Raidas be released on bail in the aforesaid case on his/her furnishing a personal bond and two sureties of the like amount to the satisfaction of the Magistrate/Court concerned, subject to following conditions :-

(i) The applicant(s) shall file an undertaking to the effect that he/she 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(s) shall remain present before the trial court on each date fixed, either personally or through his/her counsel. In case of his absence, without sufficient cause, the trial court may proceed against him/her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant(s) misuses the liberty of bail during trial and in order to secure his/her presence, proclamation under Section 82 Cr.P.C. is issued and the applicant(s) fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him/her, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant(s) 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(s) 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/her in accordance with law.

(v) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

(vi) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(vii) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 28.9.2020

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