

**A.F.R.**

**Court No. - 28**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 4691 of 2022

**Applicant :-** Zeba Rizwan

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

**Counsel for Applicant :-** Anil Kumar Tripathi, Vivek Pandey

**Counsel for Opposite Party :-** G.A., Arvind Kumar

Mishra, Mohammad Airaj Siddiqui, Sharvan Kumar Nayak, Sushil Kumar Singh, Versha Rani Srivastava

**Hon'ble Krishan Pahal, J.**

1. Counter Affidavit filed by learned counsel, Sri Sushil Kumar Singh, is taken on record.
2. Heard Sri Vivek Pandey, learned counsel for the applicant, Sri Sushil Kumar Singh, learned counsel for the victim (in the case of murder), and learned A.G.A. for the State and perused the material placed on record.
3. By means of the present bail application, the applicant seeks bail in Case Crime No. 54 of 2022, under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, Police Station- Tulsipur, District- Balrampur, during the pendency of trial.

**RIVAL CONTENTIONS:-**

4. Learned counsel for applicant has stated that applicant is a lady, aged 28 years and has her children to tender to. It is argued by the learned counsel that the prosecution under the Gangsters Act has been launched against the applicant on the basis of one criminal case shown in the gang chart, in which she has already been enlarged on bail by this Court on 20.4.2022. The details of criminal case have been mentioned in paragraph 6 of the affidavit accompanying the bail application. In the said criminal case, the role of the applicant is shown to be of criminal conspiracy only. She has been falsely implicated in the present case due to political rivalry. She is not the

member of any gang. It is further stated that there is no other criminal history of the applicant. The applicant is languishing in jail since 10.1.2022. In case, the applicant is released on bail, she will not misuse the liberty of bail.

5. Per contra, learned A.G.A. and learned counsel for the victim, Sri Sushil Kumar Singh (in the said case of murder in which applicant is on bail) has vehemently argued that he has a right to be heard and he has relied on the judgements of the Apex Court as well as of this Court, wherein it has been opined that the bails of the Gangsters Act should not be leniently taken up.

6. Learned counsel for the victim of the predicate offence under Section 302 IPC has placed much reliance on Section 19(4) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, which reads as follows :-

*“Section-19(4)- Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless :*

*(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”*

7. Learned counsel has further stated that the provisions of Clause 19(4) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 are at par with Section 37 of the NDPS Act, wherein twin conditions are in matters of commercial recovery of contraband.

8. Learned counsel has relied on the judgment of the Supreme Court passed in ***Jagjeet Singh & Others versus Ashish Mishra @ Monu & Another***<sup>1</sup>, wherein it has been stated that a 'victim' within the

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1. 2022(3) BLJ 169

meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings.

9. Learned counsel has further relied on the judgement of the Supreme Court passed in ***Sudha Singh versus State of Uttar Pradesh***<sup>2</sup>, wherein it has been opined that the accused person, who has been prosecuted in fifteen cases for serious offences including murder, attempt to murder and criminal conspiracy, should not have been granted bail under the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, and the said bail was set aside by the Supreme Court.

10. The learned counsel has further stated that the property worth crores of rupees belonging to the father of the applicant has been attached and even his three bank accounts have also been attached by the State. Learned counsel has next stated that the deep involvement of the applicant as the active member of the gang in a very sensitive matter and same has to be considered as per the provision of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, as any member of the gang, collectively or individually, is equally instrumental. Therefore, the individual act or the registration of previous case by him or her is to be judged by entire activity of gang in totality. Learned counsel has further stated that she is likely to inherit the illegally gained property of her father and husband.

11. Learned counsel has placed reliance on the judgement of this Court passed in ***Sabir Ali Khan versus State of U.P.***<sup>3</sup>, wherein it has been stated that the Court has to be satisfied regarding the fact that there is no likelihood of the applicant committing any offence, whatsoever, in future also.

12. Learned counsel has further stated that there is a criminal history of thirteen cases of the father of applicant, which includes four cases of

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2. *Criminal Appeal No. 448 of 2021*

3. *Criminal Misc. Bail Application No. 18588 of 2021*

murder. He has next stated that there is a criminal history of two cases assigned to the husband of applicant also.

13. Learned counsel for the applicant has stated that the said case laws are not applicable to the present applicant as she is a lady and the criminal history referred to regarding father and husband of applicant by the learned counsel for the said victim does not apply to the applicant. The applicant was not named in the said FIR under Section 302 IPC, and her name has come up later on during investigation. The FIR was filed against unknown persons. The father of applicant is an Ex-M.P. and all have been implicated out of political rivalry.

### **CONCLUSION:-**

14. A perusal of the record suggests that the FIR in the subject matter has been lodged by Awdhesh Raj Singh, S.H.O. P.S. Bilaspur, District-Balrampur, U.P. and there are only police witnesses in it. The victim/complainant of the predicate offence i.e. FIR No. 002 of 2022 is neither a victim nor a witness in the offence under the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986,

15. If the said victims of the predicate offence are permitted to appear and oppose the bail applications in the matters of Gangsters Act, it shall open a Pandora's box and prove hurdle in proper disposal of the case.

16. It is true that the victim has been defined under Section 2(wa) of Cr.P.C., and the victim has been accorded the opportunity to file an appeal against any order of acquittal under proviso to Section 372 Cr.P.C.. Section 2 (wa) Cr.P.C. is being reproduced herinunder:-

*“Section 2(wa)- “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”*

17. Section 24(8) of Cr.P.C. reads as follows:-

**“Section 24(8)-** The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor:

*[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under the sub-section.]*

18. Under proviso to Section 24(8) Cr.P.C., permission is accorded to the advocate of the choice of the victim to assist the prosecution and not to the public prosecutor. This has of late been added vide amendment of Cr.P.C. dated 31.12.2009.

19. Section 372 Cr.P.C. is being reproduced hereinunder:-

**“372. No appeal to lie, unless otherwise provided.-** No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

*[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]”*

20. Despite the said amendments in the Cr.P.C., Section 301 has not been amended to date. Section 301 of the Code reads hereinunder:-

**“301. Appearance by Public Prosecutors.-(1)** The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

*(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.”*

21. Section 301 applies to the complainant of the case, who can get himself represented in Court through his Advocate. The reason is that

the complainant may or may not be the stranger to the offence, but the victim is the person, who suffers due to that offence.

22. Of late, the criminal jurisprudence has developed that the victim is being accorded proper opportunity of being heard not only at the various stages of trial and even at the stage of disposal of bail. But the story herein is a bit different. The matter in question is under Section 3(1) of U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, and not under the IPC or any other Special Act and the complainant of the said case is the S.H.O. of the police station. So the counsel for the victim of the predicate offence i.e. FIR No. 002 of 2022 does not come within the category of “victim” pertaining to the present case. In spite of the provisions discussed above, the counsel for victim in the offence u/s 302 IPC has been heard at length.

23. After hearing the learned counsel for the parties and seeing the circumstances of the case and considering the fact that there is only one case pending against the applicant and that too of a criminal conspiracy, the twin conditions referred to in Section 19(4) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, stand satisfied and it is a fit case for bail.

24. Without expressing any opinion on the merits, the bail application is allowed. Let the applicant **Zeba Rizwan**, involved in aforesaid case crime be released on bail on her furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

25. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

**Order Date :- 23.5.2022**

Shalini