

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3306 of 2023

Applicant :- Govind

Opposite Party :- State of U.P.

Counsel for Applicant :- Ardhendu Shekhar Sharma, Ram Babu Sharma

Counsel for Opposite Party :- G.A., Mahendra Singh

Hon'ble Sameer Jain, J.

1. Heard Sri Ram Babu Sharma, learned counsel for the applicant, Sri Mahendra Singh, learned counsel for the informant and Sri Santosh Nigam, learned AGA for the State.
2. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 129 of 2021 under section 376-D IPC, Police Station Zarif Nagar, District Budaun.
3. Learned counsel for the applicant submits that this is second bail application filed on behalf of the applicant and first bail application of the applicant was dismissed by this Court on 06.01.2022 and he is pressing the instant application on the ground that after rejection of the first bail application, co-accused Sumit has been enlarged on bail by this Court on 18.10.2022 vide order passed Crl. Misc. Bail Application No. 41680 of 2022. He produced the aforesaid bail order during the course of argument which is taken on record and marked as 'A'.
4. He further submits that victim, in her statement under section 164 Cr.P.C. stated that co-accused Sumit also committed rape with her along with the applicant and one another. Therefore, the case of the applicant is at par with co-accused Sumit and as similarly placed co-accused Sumit has already been enlarged on bail, therefore, on the ground of parity, applicant should also be released on bail.
5. Further, it is submitted that applicant is not having any previous criminal history and is in jail since 10.06.2020 i.e. for more than three years.

6. Per contra, learned AGA as well as learned counsel for the informant although opposed the prayer for bail but they could not dispute the fact that applicant is in jail for more than years and after rejection of the first bail application, co-accused Sumit has been enlarged on bail by this Court on 18.10.2022 and case of the applicant is at par with co-accused Sumit.

7. I have heard all the parties and perused the record of the case.

8. Although, this is second bail application on behalf of the applicant and the first application was dismissed on merit on 06.01.2022 but after rejection of the first bail application, co-accused Sumit has been enlarged on bail by this Court on 18.10.2022, case of the applicant is at par with him as the victim in her statement recorded under section 164 Cr.P.C. also made allegation of rape against co-accused Sumit too.

9. Apex Court in the case of **Satender Kumar Antil vs. CBI and others** reported in **Manu/SC/0851/2022** observed that all the accused persons should be treated equally and while deciding bail application, view of the Court should be in consonance with the provisions of Articles 14 and 15 of the Constitution of India.

10. Further, applicant is not having any previous criminal history and he is in jail since 10.06.2020 i.e. for more than three years.

11. Therefore, considering the facts and circumstances of the case as discussed above, in my view, the applicant is entitled to be enlarged on bail.

12. Let the applicant **Govind** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) 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 or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

13. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 17.10.2023

Madhurima