

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1117 of 2023

Applicant :- Sonu @ Firoz Ansari

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mohd. Shoeb Khan

Counsel for Opposite Party :- G.A., Abida Syed

Hon'ble Samit Gopal, J.

1. Learned counsel for the State filed affidavit of compliance dated 01.11.2023 which is taken on record.
2. A perusal of the paragraph-2 and annexure-1 of the said affidavit goes to show that notice has been served on the first informant. Despite service of notice on first informant, no one appears on behalf of the first informant.
3. Heard Sri Mohd. Shoeb Khan, learned counsel for the applicant, Ms. Abida Syed, Panel Lawyer of the High Court Legal Services Committee and Shri Ram Prakash Shukla, learned counsel for the State and perused the material on record.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sonu @ Firoz Ansari seeking enlargement on bail during trial in connection with Case Crime No. 208 of 2022, under Sections 376, 511 IPC and Section 7/8 POCSO Act, registered at P.S. Chowk, District Maharajganj.
5. The first information report was lodged on 20.11.2022 by Smt. Sunita against the applicant and co-accused Samir alleging therein that on 20.11.2022 her daughter aged about 16 years was on the roof of the house at about 7:00 P.M. and cooking food while she and other family members were sitting outside the house and were warming themselves by fire and in the meantime, she heard shrieks of her daughter on which she along with other persons ran there and found the accused Samir and his mama Sonu, who is present applicant, at the roof. They had thrown her daughter down on the floor where Sonu had gagged her mouth whereas co-accused Samir was attempting to commit rape upon her. She identified the accused persons in light of torch after which they ran away.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the present case is a case of attempt to commit rape. As per first information report, the role assigned to the applicant is of gagging the mouth of the victim whereas allegation of attempting rape on the victim is on co-accused Samir. It is argued that the victim in her statement recorded during investigation has assigned common and general role to both the accused persons of committing an attempt to rape her. It is argued that the victim was not subjected to medical examination as the same was refused. It is argued that case of the applicant thus as per the prosecution version is distinguishable with that of co-accused Samir. It is argued that co-accused Samir @ Samir Ansari has been enlarged on bail by coordinate Bench of this Court vide order dated 23.03.2023, in Criminal Misc. Bail Application No. 1530 of 2023. Copy of the order has been produced before this Court, which is taken on record. It is argued that the applicant has no criminal history as stated in para 18 of the affidavit and is in jail since 21.11.2022.

7. Per contra, learned counsel appearing for the High Court Legal Services Committee and learned AGA opposed the prayer for bail.

6. After having heard learned counsels for the parties and perusing the records, it is evident that as per the FIR, allegation of attempting to commit rape upon the victim is on co-accused Samir. Co-accused Samir has been granted bail by coordinate Bench of this Court. In the statement of the victim recorded during investigation, common and general role has been assigned. The medical examination of the victim was refused.

7. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant- **Sonu @ Firoz Ansari**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties **(one of the sureties of the applicant will be his family member and the other to be of local person)** each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if 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 I.P.C.

(V) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant 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 her in accordance with law and the trial court may proceed against her under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

9. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

10. The bail application is allowed.

Order Date :- 29.11.2023

Mukesh Kr.

(Samit Gopal,J.)