

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4055 of 2023

Applicant :- Sajjan

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

Counsel for Applicant :- Ganesh Shanker Srivastava, Satish Chandra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Satish Chandra Singh, learned counsel for the applicant, Sri Ram Prakash Shukla, learned AGA for the State and perused the material on record.
3. Notice was issued to the first informant vide order dated 01.5.2023. Office vide its report dated 29.9.2023 reported that notice upon the opposite party no. 2/first informant has been served personally according to report received from C.J.M. concerned. Despite service no one appears on behalf of the first informant. Service of notice upon the first informant is sufficient.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sajjan, seeking enlargement on bail during trial in connection with Case Crime No. 181 of 2022, under Sections 376, 504, 506 I.P.C. & 3/4 POCSO Act, registered at P.S. Kathela Samaymata, District- Siddharth Nagar.
5. The F.I.R. of the matter was lodged on 25.10.2022 by Smt. Butun against the applicant alleging therein that her daughter is aged about 17 years. Sajjan a person of village, who is already married and having children, allured her daughter and on false promise to marry, since last six months, established physical relationship with her. When she came to know about it, she resisted. On 01.10.2022 at about 09.00 p.m. the accused entered into her house and abused her daughter and stated of making her objectionable video viral.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that as per the certificate of C.M.O. concerned, the victim was found to be aged about 18 years. It is further argued that the victim has refused her internal medical examination. It is argued while placing paragraph-4 and annexure no. S.A.-1 being the statement of the victim recorded in the trial, to the supplementary affidavit dated 26.3.2023, that the victim appeared before the trial court and denied the prosecution story and she was declared hostile by the trial court. It is argued that no such objectionable video has been recovered by the Investigating Officer during investigation. It is argued that the applicant has no other criminal antecedents as stated in para-24 of the affidavit and is in jail since 31.10.2022.
7. Per contra, learned State counsel opposed the prayer for bail.

8. After having heard learned counsels for the parties and perusing the record, it is evident that the as per the certificate of C.M.O. concerned, the victim was found to be aged about 18 years. The victim did not support the prosecution case and has been declared hostile. No such objectionable video has been recovered by the Investigating Officer during investigation.

9. 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.

10. Let the applicant- Sajjan, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties 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 him in accordance with law and the trial court may proceed against him 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.

11. 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.

12. The bail application is allowed.

13. Since the prosecutrix has completely denied the prosecution version and has stated that she on the explaining away of her family members and

female police implicated the applicant during investigation, the applicant did not commit rape upon her and as such, she is not entitled to the benefit of any compensation paid by the State Government which has been collected from the taxpayers of the country. The trial court will consider issuance of a direction against the prosecutrix to refund the amount received by her as compensation, if any, in the appropriate head of the treasury account.

(Samit Gopal,J.)

Order Date :- 29.11.2023

Naresh