

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6224 of 2023

Applicant :- Yogendra Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Manu Sharma, Dinesh Kumar Pandey

Counsel for Opposite Party :- G.A., Sanjay Srivastava

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Manu Sharma and Sri Dinesh Kumar Pandey, learned counsels for the applicant and Sri Birendra Pratap Singh, learned counsel for the State and perused the record. Sri Sanjay Srivastava, learned counsel for the first informant is not present.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Yogendra Gupta, seeking enlargement on bail during trial in connection with Case Crime No. 254 of 2022, under sections 376(2)(n), 504 and 506 I.P.C., Police Station Kakadev, District Kanpur Nagar.
4. The FIR of the present case was lodged on 30.09.2022 by Swaminath against the applicant alleging therein that the applicant used to keep a fruit chat stall outside his house. In the absence of family members, he used to sexually assault his daughter aged about 25 years and used to threaten her. She did not disclose it to any one. One day when she suffered pain in the stomach and was taken to the doctor the doctor after ultrasound examination found her to be pregnant for eight months. When the family members talked to the applicant about it he threatened them. When the wife of the applicant was also informed about it she threatened them.
5. Learned counsel for the applicant has argued that the applicant has been falsely implicated in the present case. It is argued that the victim is a major woman. It is argued that the date and time of the incident of the present matter is missing in the F.I.R. and even in the statement of the victim recorded during investigation. It is argued that the entire prosecution case goes to show that the sexual relationship between the applicant and the victim was carrying on since long time but no complaint whatsoever was made either to

the police or to any authority. It is argued that the applicant is not having any criminal history as stated in para 18 of the affidavit. The applicant is in jail since 01.10.2022.

6. Per contra learned counsel for the State has vehemently opposed the prayer for bail but could not oppose the aforesaid submission.

7. After hearing the counsel for the parties and perusing the record, it is evident that the victim is a major woman. The allegation with regard to the offence of rape is stated to have been continued since long. There was no complaint regarding it by the victim or any member. Subsequently, when the victim became pregnant for eight months the present F.I.R. has been lodged.

8. 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.

9. Let the applicant-**Yogendra Gupta**, 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 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.

10. 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.

11. The bail application is allowed.

Order Date :- 13.12.2023

K.K. Maurya

(Samit Gopal,J.)