

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14887 of 2022

Applicant :- Bintu @ Pintu

Opposite Party :- State Of U.P And 4 Others

Counsel for Applicant :- Prakash Tripathi, Rohit Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Rohit Shukla, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel for the State and perused the material on record.
3. This second bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Bintu @ Pintu, seeking enlargement on bail during trial in connection with Case Crime No. 65 of 2021, under Sections 363, 366, 376 I.P.C. and 3/4 POCSO Act, registered at Police Station Bhot, District Rampur.
4. The first bail application of the applicant was dismissed for want of prosecution by this Court vide order dated 08.03.2022 passed in Crl. Misc. Bail Application No. 46547 of 2021 (Bintu @ Pintu Vs. State of U.P.).
5. The FIR of the matter was lodged on 29.05.2021 under Section 363 IPC by Hari Shankar against unknown person alleging therein that his daughter aged about 16 years went missing on 28.05.2021. At about 12:30 pm when he got up for urination he found the main gate of the house was open and his daughter was missing. She was searched a lot but could not be traced.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim was subsequently recovered on 02.07.2021. It is argued that the victim in her statement recorded under Section 161 Cr.P.C. stated that she used to talk to the applicant since last four months and she was called by him on 28.05.2021 at about 10:30 am where she went and both of them went on foot outside village from where she went to Rampur and then from there they went to Delhi by

bus. From Delhi they went to Noida and solemnized marriage there and then from there they went to Chennai and stayed there like husband and wife, from there they returned back to Delhi and went to Noida. They stayed in Noida for a month. From Noida they were going to Rampur wherein on the way they apprehended. It is argued that in the statement of the victim recorded under Section 164 Cr.P.C. she does not state of any sexual assault or physical relationship by the applicant with her. She states that she went to Delhi after getting angry from her mother where the applicant met her and then went to Rajasthan and then they came to Noida and stayed there. The applicant has not done any forceful act with her. It is argued that the CMO concerned opined her age to be 18 years and as such she was a major. It is argued that the present case is a case of consent. He further argued that the applicant has no criminal history as stated in para 17 of the affidavit and is in jail since 03.07.2021.

7. Per contra, learned counsel for the State opposed the prayer for bail.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is not named in the FIR. The victim names the applicant in her statements during investigation. She travelled to various places with the applicant without any resistance. The victim in her statement recorded under Section 164 Cr.P.C. she does not state of any sexual assault by the applicant. The CMO concerned opined her age to be 18 years and as such she is a major.

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 **Bintu @ Pintu**, 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***.

Order Date :- 30.11.2023

M. ARIF

(Samit Gopal, J.)