

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14311 of 2023

Applicant :- Tikaram

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

Counsel for Applicant :- Mohammad Arshad Khan, Chandra Bhushan Yadav, K.K. Tripathi

Counsel for Opposite Party :- G.A., Irshad Ahmad

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State, Sri Irshad Ahmad learned counsel for the informant and perused the record.

2. It is argued by the learned counsel for the applicant that the applicant is absolutely innocent and has been falsely implicated in the present case with some ulterior motive. It is submitted that it is a case of false implication. The incident took place on 18.11.2018 whereas, F.I.R. has been lodged on 19.11.2018. From the statement of independent witnesses of the village it is clear that victim had affair with the co-accused namely Amit. On the date of the incident, the victim had left her house to accompany the co-accused Amit but he did not took her. There is dispute between the applicant and father of the victim regarding 'Nali' and from the perusal of statement of the victim recorded under Section 164 Cr.P.C., it appears that Poonam, who is wife of applicant is said to have asked the accused-applicant, to commit rape with the victim properly since is standing. It has further been submitted that no wife would ask her husband

to commit rape of a girl in her presence. Learned counsel further submits that similarly situated co-accused namely, Amit, who has also been assigned the role of committing rape with victim in her statement recorded during the course of investigation has already been enlarged on bail by co-ordinate Bench of this Court vide order dated 09.01.2019 passed in Criminal Misc. Bail Application No.54647 of 2019, copy of which order has been produced before this Court and is taken on record. It is thus contended that the applicant is also entitled for bail on the ground of parity. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 21.12.2022 having no criminal history.

3. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail he will misuse the liberty of bail, however, could not dispute the submissions of learned counsel for the applicant with regard to parity.

4. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without

expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is allowed.

5. Let applicant **Tikaram** involved in S.S.T.No. 423 of 2019, Case Crime No. 429 of 2018 under Section 376 I.P.C., 3/4 of POCSO Act, Police Station Asmouli, District Sambhal, be released on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

I. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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.

II. The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

IV. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the

trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

6. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 20.11.2023

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