

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19535 of 2022

Applicant :- Javed

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

Counsel for Applicant :- Anup Kumar

Khare,Amit,Ashutosh,Mohammad Sakir,Mohd Fareed

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to provisions of POCSO Act, therefore, notices were issued to informant of the case. As per the office report dated 01.11.2023, notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Mohammad Sakir, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 786 of 2019, under Sections 363, 366, 376(2)(Jha) IPC & 3/4 POCSO Act, Police Station-Katghar, District- Moradabad, during pendency of the trial in the court below.

4. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit on 08.09.2020 and he is pressing the instant second bail application mainly on the ground that applicant is in jail since 15.10.2019 i.e. for more than four years and till date, trial of the case could not be concluded.

5. He further submitted that as victim of the case has already been appeared before the trial court, therefore, there is no chance of any tampering with the prosecution evidence.

6. He further submitted that although, victim was minor aged 15 years but she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that she herself had gone alongwith the applicant and when victim appeared before the trial court then she repeated her earlier version recorded under Section

161 Cr.P.C. and 164 Cr.P.C.

7. He further submitted that applicant is not having any previous criminal history.

8. Per contra, learned AGA opposed the prayer for bail and submitted that this is the second bail application filed on behalf of the applicant and after considering the entire facts of the case, his first bail application was dismissed by this Court but could not dispute the fact that applicant is in jail for more than four years and till date, trial of the case could not be concluded. Learned AGA further could not dispute the fact that victim of the case has already been examined by the trial court.

9. I have heard learned counsel for the parties and perused the record of the case.

10. However, this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on merit on 08.09.2020 but it appears that applicant is in jail since 15.10.2019 i.e. for more than four years and till date, trial of the case could not be concluded, however, it further reflects that victim of the case has already been examined by the trial court, therefore, I find force in the argument advanced by the learned counsel for the applicant that there is no chance of any tampering with the prosecution evidence, therefore, considering the long incarceration of the applicant for more than four years, in my view, applicant is entitled to be released on bail.

11. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

12. Let the applicant- **Javed** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social

activity.

13. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 2.11.2023

KK Patel