Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16420 of 2023

Applicant :- Vishal
Opposite Party :- State of U.P.
Counsel for Applicant :- Zafar Abbas,Rizwan Ahmad(Qureshi),Sarve Nazir,Zulfikar Ali
Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. Learned counsel for the applicant submits that by the efflux of time, the trial began wherein the victim had deposed as P.W.1 and she has categorically stated that prior to the incident, the accused-applicant had taken money from her husband and when the same was demanded some altercation took place and no rape has been committed by the applicant. She has also stated that mohalla peoples took her signature on a plain paper and got transcribed the matter and had sent the application before the Superintendent of Police, when in fact no such offence had taken place, copy of which statement is annexed as Annexure-SA1 to the supplementary affidavit. It is thus contended that the applicant has been falsely implicated in the present case. 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 23.10.2022 having no criminal history.

3. Per contra, learned A.G.A. has 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 again indulge in similar activities and will misuse the liberty of bail.

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 **Vishal** involved in Case Crime No. 913 of 2022 under Sections 376, 328, 506 I.P.C., and Section 67A I.T. Act, Police Station Majhola, District Moradabad, 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 :- 2.11.2023
S.Ali

Digitally signed by :-
SHAUKAT ALI
High Court of Judicature at Allahabad