

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20893 of 2023

Applicant :- Shiv Mohan

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

Counsel for Applicant :- Ram Ji Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Notice was issued to the first informant vide order dated 07.06.2023. As per the office report dated 07.07.2023, a report dated 04.07.2023 of C.J.M. concerned has been received stating therein that notice has been served on the first informant.
3. The perusal of the said report shows that notice has been served personally on the first informant.
4. No one appears on behalf of the first informant even when the matter has been taken up in the revised list.
5. Heard Sri Ram Ji Tripathi, learned counsel for the applicant, Sri Ram Prakash Shukla, learned counsel for the State and perused the material on record.
6. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Shiv Mohan**, seeking enlargement on bail during trial in connection with Case Crime No. 0070 of 2022 (State Vs. Sita Ram and others), under Sections 363, 366, 323, 376-D, 506 IPC and 3/4 POCSO Act, registered at P.S. Gopiganj, District Bhadohi.
7. The FIR of the matter was lodged on 27.02.2022 by Santosh Kumar @ Hathi against the applicant, Dimpu Mallah and Sitaram alleging therein that his daughter studying in class 8th has been lured and enticed away by the accused persons on 01.01.2022. She was searched a lot but could not be traced. She was aged about 14 years.
8. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the medical examination of the victim does not support the

prosecution case since there is no opinion of the doctor regarding any sexual assault on her. It is argued that as per radiological opinion the victim was opined to be about 18 to 20 years. It is argued that the trial in the matter has started in which Santosh Kumar the first informant has been examined as PW-1 and the victim has also been examined as PW-2 in which in the cross examination of the victim there are certain contradictions. The said statements have been placed before the Court which is annexure 6 to the affidavit. It is argued that the applicant is a married person having three daughters and one son as such is being involved in the matter is not at all possible. He further argued that the applicant has no criminal history as stated in para 23 of the affidavit and is in jail since 13.10.2022.

9. Per contra, learned counsel for the State opposed the prayer for bail and argued that the trial in the matter is under progress in which two witnesses including the victim have been examined in which the victim and the first informant have supported the prosecution story. It is argued that as such the release of the applicant at this stage may have an adverse effect on the trial.

10. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is named in the FIR, statement of the victim recorded during investigation and also in the trial. The first informant and the victim have supported the prosecution case in the trial. Since the trial is under progress, the release of the applicant, may have an adverse effect on the trial. I do not find it a fit case for bail at this stage.

11. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

12. The bail application is, accordingly, **rejected**.

13. However, since the trial is of the year 2022 and the applicant is the accused, it is provided that the applicant may file an application for expeditious disposal of the trial of the case before the court concerned within two weeks from today, which may as per its load of work, diary and pendency of cases, pass appropriate orders on the same.

Order Date :- 1.11.2023

M. ARIF

(Samit Gopal, J.)