

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23637 of 2023

Applicant :- Somendra

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

Counsel for Applicant :- Kamal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Brijesh Pratap Singh, learned AGA for the State apprised the Court that on 23.05.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Kamal Singh, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 35 of 2022, under Sections 452, 376(3), 506 IPC & 3/4(2) POCSO Act, Police Station-Kotwali Jalaun, District- Jalaun, 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 by co-ordinate Bench of this Court on 19.10.2022 and he is pressing the instant second bail application on the ground that after rejection of the first bail application of the applicant, even mother of the victim has been declared hostile and victim had earlier already declared hostile. He further submits, applicant is in jail since 26.02.2022 i.e. for last more than one and half years. He further submitted that applicant is not having any criminal history.

5. 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, first bail application of the applicant was dismissed by this Court including the fact that victim of the case did not support the prosecution case during her cross examination and therefore, even if after rejection of the first bail application of the applicant, mother of the victim has been declared hostile then it hardly matter, however, he suggested that this Court may direct the trial court to conclude trial within a stipulated period of time,

considering the fact that applicant is in jail for last more than one and half years.

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

7. This is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by co-ordinate Bench of this Court on 19.10.2022 and the instant second bail application has been filed on the ground that all the prosecution witnesses including victim and informant i.e. her father and even her mother have appeared before the trial court and none of them supported the prosecution case but from the order dated 19.06.2022 passed by co-ordinate Bench of this Court on the first bail application of the applicant, it appears that at the time of passing the same, the fact that informant and victim both during their cross examination did not support the prosecution case, was duly discussed by this Court and therefore, this fact cannot be considered as a new ground. I find force in argument advanced by learned AGA that even if after rejection of the first bail application of the applicant, mother of the victim has been declared hostile then also it hardly matter.

8. In view of the above, I find no reason to release the applicant on bail.

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

10. 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.

11. However, considering the fact that applicant is in jail for last more than one and half years, trial court is directed to conclude the trial of the case within a period of eight months from the date of production of certified copy of this order, strictly as per the provisions of Sections 35 POCSO Act and 309 Cr.P.C., if there is no legal impediment.

Order Date :- 11.12.2023

KK Patel