

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32503 of 2022

Applicant :- Santosh Kumar Singh

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

Counsel for Applicant :- Dr. C.P. Upadhyay, Raju Singh

Counsel for Opposite Party :- G.A., Satendra Kumar

Hon'ble Vivek Varma, J.

1. Rejoinder affidavit, filed by the counsel for the applicant, is taken on record.
2. Heard learned Counsel for the applicant, Sri V.P. Tripathi, learned A.G.A. for the State and Sri Satendra Kumar, counsel for the informant. Perused the record.
3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 1206 of 2021, under Sections 323, 377, 354Ka, 354Kha I.P.C., and 7/8 Protection of Children from Sexual Offence Act, 2012, Police Station- Dhoomanganj, District- Prayagraj during pendency of the trial.
4. Counsel for the applicant submits that the applicant was serving as Nayab Subedar in the Indian Army. He retired on 31.3.2021. Earlier, the applicant had received an appreciation certificate from the President of India. The applicant did not act inappropriately with his wife and daughter (victims). The instant matter arises out of matrimonial discord between the applicant and the informant. As per the allegations in the first information report the incident is alleged to have occurred on 22.11.2021 and 25.11.2021. The first information report was lodged on 8.12.2021. The delay in the facts of the present case is fatal to the prosecution case. As per the medical report of the informant, no injury was seen on the external part of the body. The other victim refused to get herself medically examined. The relations between the applicant and his wife were cordial. The applicant after paying the entire sale consideration purchased a property on 11.8.2006 in the name of the informant. The applicant had also opened a joint account in the State Bank of India with the informant. The said account was operated jointly. When the applicant after taking retirement started living in his house he found that the informant was having illicit relations with another person and on objection being raised, the instant prosecution has been instituted. The applicant is in jail since 11.5.2022 having no criminal history. The trial is moving at a snail's pace and is not likely to conclude early. The applicant is not responsible for the delay in the trial. Inordinate delay in concluding the trial has led to virtually and indefinite imprisonment of the applicant without there being any credible evidence to implicate him in the offence and violates the rights of the applicant to a speedy trial. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. and counsel for the informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the first information report was lodged belatedly. The applicant is the husband of the informant. No external injury was seen on the body of the informant. Civil suit was also filed by the applicant for restraining the informant from interfering in the possession of the property owned by the applicant. Admittedly, enmity exists between the parties. At this stage, there is no substantive evidence against the applicant. The applicant has no criminal antecedents. Further the applicant has presently remained confined for more than one year and six months and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant, **Santosh Kumar Singh** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 29.11.2023
S.S.