

Court No. - 85

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27081 of 2023

Applicant :- Chhote Lal @ Dadhi

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

Counsel for Applicant :- Pratibha Jaiswal

Counsel for Opposite Party :- G.A.

Hon'ble Mayank Kumar Jain,J.

Shri Ajay Singh, learned A.G.A informed the court that notice upon respondent no.2 has been served properly.

Heard learned counsel for the appellant, learned AGA for opposite party no.1 and perused the material placed on record.

The present second bail application has been filed on behalf of applicant in Case Crime No.357 of 2022, under Sections 376(3), 363, 506 I.P.C. and Section 3/4(2) of POCSO Act, Police Station Robertsganj, District Sonbhadra, with the prayer to enlarge the applicant on bail. The first bail of the applicant was rejected by this Court vide order dated 05.01.2023 passed in Criminal Misc. Bail Application No.33009 of 2022.

It is further submitted that after the rejection of first bail of the applicant, the statement of the witnesses of fact, namely, P.W.1-Mahesh (informant), P.W.2, victim and P.W.-3 Rekha (sister-in-law of the informant) has been recorded. He further submitted that there are material contradiction in the statements of the witnesses about the time of the incident, age of the victim and nature of the fact. It is also submitted that since all the witnesses of the fact have been examined, therefore, there is no possibility on behalf of the applicant that the applicant may temper the witnesses. It is further submitted that as per the radiological examination, the age of the victim was determined to be 16 to 17 years, therefore, there is a margin of two years and after its calculation, the victim is a major girl. It is further submitted that the applicant has no criminal history to his credit. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. have vehemently opposed the prayer for grant of bail to the applicant but he could not dispute that all

the witnesses of the fact have already been recorded.

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

In ***Union of India Vs. K.A. Najeeb (2021) 3 SCC 713***, the Hon'ble Apex Court has observed that:-

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee v. Union of India SCC para-15 it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail."

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

Let appellant, **Chhote Lal @ Dadhi** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The applicant will not tamper with the prosecution evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make any 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 to any police officer or tamper with the evidence.

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

Order Date :- 13.10.2023

Shivangi