

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28017 of 2023

Applicant :- Anil

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

Counsel for Applicant :- Upendra Kumar Pushkar

Counsel for Opposite Party :- G.A.,Narayan Swaroop,Yashasvi Shukla

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Upendra Kumar Pushkar, learned counsel for the applicant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record. Sri Narayan Swaroop and Sri Yashasvi Shukla, learned counsels for the first informant / opposite party no.4 are not present even when the matter is taken in the revised list.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Anil**, seeking enlargement on bail during trial in connection with Case Crime No. 85 of 2023, under Sections 452, 376 I.P.C. and Section 3/4 of Protection of Children from Sexual Offences Act, 2012, Police Station Kasganj, District Kasganj.

4. The first information report of the present case was lodged on 07.02.2023 by Kamal Singh against the applicant alleging therein that on 03.2.2023 at about 11 p.m. his younger sister aged about 19 years was alone in the house wherein Anil the brother-in-law of his neighbour Hardev came in the house and committed rape with her. When his mother came back then his sister told her about it and his mother then told him about it. He has come to police station, a report be lodged and action be taken.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that as per the first information report itself the victim is a major girl. It is argued that although the victim has supported the prosecution case in her statement recorded under section 161 Cr.P.C. but in her statement recorded under section 164 Cr.P.C. she states of having a love affair with the applicant Anil, they used to talk on phone after which she was caught red-handed and was beaten by her mother & brother and then the first information report has been lodged. She further states that she wants to marry Anil and no offence has been committed with her. It is argued that looking to the statement of the victim recorded under section 164 Cr.P.C. it is clear that the same is in variance with the prosecution version. The applicant has no criminal history as stated in para 06 of the affidavit and is in jail since 08.02.2023.

6. *Per contra*, learned counsel for the State opposed the prayer for bail.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the victim as per the first information report is a major girl. She has not supported the prosecution version in her statement recorded under section 164 Cr.P.C. There is variation in the prosecution version as per the first information report and statement of the victim recorded under section 164 Cr.P.C. and under section 164 Cr.P.C.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- **Anil**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one of the sureties will be of family members and the other will be of a local person**) each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

Order Date :- 14.12.2023

AS Rathore

(Samit Gopal,J.)