

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34052 of 2022

Applicant :- Ameen Shekh

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

Counsel for Applicant :- Faizan Siddiqui, Manjur Mohammad Ansari, Varun Kumar Chaubey

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. As per office report dated 04.11.2022, notice of the instant application has also been served personally on the opposite party no. 2/ informant. However, when the case is called out, none appears on behalf of the said opposite party nor any counter affidavit has been filed on his behalf.

2. Heard counsel for the applicant and learned A.G.A. for the State-opposite party.

3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 550 of 2022 under Sections 323, 354B of I.P.C. and Section 7/8 of the Protection of Children from Sexual Offences Act, 2012, Police Station- Kasya, District- Kushinagar, during the pendency of the trial.

4. Counsel for the applicant contends that the applicant has been falsely implicated in the present case owing to certain other dispute between the parties. The incident is alleged to have occurred on 29.06.2022. According to the prosecution story, the Police had reached the spot and the authorities were informed about the incident. However, the application for registration of the F.I.R. was filed on 30.06.2022 and the F.I.R. was lodged on 01.07.2022. The applicant was arrested on 02.07.2022. The delay in the facts of the present case is fatal to the prosecution case. It is contended that if the Police had reached the spot and recovered the victim from the spot, there was no occasion to arrest the applicant on 02.07.2022. It is next contended that there are contradictions in the statements of the victim under Section 161 Cr.P.C. and 164 Cr.P.C. The victim in her statement under Section 164 Cr.P.C. has made material changes to aggravate the offence and save the failing prosecution case. The first information report was lodged after the victim was recovered, as such, the said contradictions discredit the prosecution case. The medical report does not support

the prosecution case. The applicant did not act inappropriately with the victim. The applicant is in jail since 02.07.2022, having no criminal history. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. has 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 F.I.R. was lodged belatedly. The delay in the facts of the present case is fatal to the prosecution case. There are inconsistencies in the statements of the victim under Section 161 Cr.P.C. and 164 Cr.P.C. The said inconsistencies discredit the prosecution case. Further, the applicant has no criminal antecedents and has remained confined for more than one year and three 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 delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- **Ameen Shekh**, involved in aforesaid case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that he:

(i) shall appear on the date fixed by the trial court;

(ii) shall not tamper with the prosecution evidence;

(iii) shall not pressurize the prosecution witnesses.

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 :- 13.10.2023

Sachin Mishra