

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28846 of 2023

Applicant :- Shahbaj

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

Counsel for Applicant :- Juned Alam, Mohd Hamid

Counsel for Opposite Party :- G.A., Zaid Arshad

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Juned Alam, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel for the State and perused the material on record. Sri Zaid Arshad, learned counsel for the first informant is not present.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Shahbaj, seeking enlargement on bail during trial in connection with Case Crime No. 197 of 2022 under Sections 363, 366, 376 I.P.C. and 3/4 POCSO Act registered at police station Kutubsher, District Saharanpur..
4. The FIR of the present case was lodged on 26.05.2022 by Ishrat Ali against the applicant and his wife alleging therein that his daughter, namely, Alfisha aged about 16 years has been allured and enticed away by the accused persons. The accused persons were living on rent in his house and on 24.04.2022, though they had vacated the house but were still occupying the shop, which was also on rent. They lived there for about one and half years. Earlier there had been fight between them after which the accused persons allured his daughter aged about 18 years. On 17.05.2022 at about 7:30 a.m., his daughter went for school but did not reach there. When on search, she was not

traced, search was made for the accused person but they had also fled away from their house. The FIR be thus 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 there is contradiction in the F.I.R. itself regarding the age of the victim as at one place, the first informant has stated her age to be 16 years whereas in later part has stated her age to be 18 years. It is argued that the victim in her statement recorded under Section 161 Cr.P.C. has stated that she had gone from her house on her own sweet will and subsequently in her statement recorded under Section 164 Cr.P.C. though she has reiterated the fact of going from her house on her own sweet will but added that she is in love with the applicant and once physical relationship was established between them. It is argued that the victim is a major girl as in the medico legal report, the Chief Medical Officer has opined her age to be 19 years. It is argued that the present case is a case of consent. It is argued that charge sheet has been submitted in the matter, as such there are no chances of the applicant tempering with the evidence. It has also been pointed out that the applicant is not having any criminal history as stated in para 25 of the affidavit. The applicant is in jail since 22.08.2022.

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

7. After hearing the counsel for the parties and perusing the record, it is evident that the victim as per the certificate of the Chief Medical Officer, is a major girl and there are contradiction in the statements of the victim recorded under Sections 161 and 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- Shahbaj, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties 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.

(Samit Gopal, J.)

Order Date :- 18.10.2023
Shiraz