

Court No. - 48

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30104 of 2023

Applicant :- Sadan

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

Counsel for Applicant :- Shantanu Srivastava, Saurabh Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard learned counsel for applicant and learned AGA for State.
2. This is second bail application filed by applicant-Sadan in Case Crime No. 30 of 2023 (Session Trial No. 635 of 2023), under Sections 363, 366A, 376 IPC and 3/4 POCSO Act, Police Station Noorpur, District Bijnor. First bail application for applicant was disposed of vide order dated 10.05.2023 by giving following reasons:

"15. In the present case father of victims has knowledge that offence has already been committed. Therefore, at this stage, either compromise on behalf of victims or to say anything contrary, could be considered as an offence. Therefore, Trial Court is directed that while dealing with trial it shall also take note the judgment passed by Delhi High Court in Independent Thought (supra) and if necessary it will have liberty to direct to lodge FIR against informant.

16. With aforesaid observation/ direction, the bail application is disposed of. "

3. In pursuance of order passed by this Court, Trial Court has submitted report that out of ten proposed prosecution witnesses, seven have already been examined and trial would be concluded within three months.
4. Learned counsel for applicant submits that during trial both victims have not supported case of prosecution and were declared hostile. He further submits that on basis of nature of evidence at this stage possibility of conviction appears to be very remote as well as applicant is in jail since 28.01.2023, therefore, he may be released on bail.
5. Learned AGA appearing for State has not disputed the nature of evidence,

however, he submits that since trial is at the fag end, therefore, applicant may not be released on bail.

6. Heard learned counsel for parties and perused the material on record.

7. As referred above, the victims have not supported case of prosecution during trial even in their examination-in-chief and declared hostile, therefore, taking note of nature of evidence before Trial Court at this stage, as well as submission of learned counsel for applicant, this Court is of the view that applicant has made out a case for bail.

8. However, applicant is directed to remain present on each and every date as and when required by Trial Court during trial and in case any application for exemption on vague ground is filed, the same shall be a ground for Trial Court to cancel bail immediately.

9. Let the applicant-Sadan 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 shall file an undertaking to the effect that he shall not seek any adjournment or exemption from appearance on the date fixed in trial. 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.

(iii) 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.

(iv) The Trial Court may make all possible efforts/endeavour and try to conclude the trial expeditiously, preferably within a period of three

months after release of applicant, if there is no other legal impediment.

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.

12. It is made clear that the observations made hereinabove are only for the purpose of adjudicating the present bail application.

Order Date :- 13.12.2023

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