

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 30678 of 2023

Applicant :- Amit Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. Learned counsel for the applicant submits that though there is specific allegation against the applicant along with other accused persons in the F.I.R. as well as in the statements of the informant and victim recorded under Sections 161 & 164 Cr.P.C., but during course of trial the victim was examined as P.W.2, who in her statement has not supported the prosecution case and has become hostile, which statement is filed as Annexure-12 to the affidavit filed in support of the bail application, thus, it is argued that there is bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 23.11.2022, having no criminal history and has already undergone a substantial period of incarceration, therefore, he deserves to be enlarged on bail sympathetically.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence, but he has not disputed that the victim before the trial court has become hostile.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Amit Kumar**, involved in Session Trial No. 135 of 2023, arising out of Case Crime No. 471 of 2022, under Sections 376-D, 328, 341, 506 I.P.C. and Section 67 of Information Technology Act, Police Station Sadabad Kotwali, District Hathras, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

6. 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 in accordance with law.

7. The bail application is **allowed**.

Order Date :- 6.12.2023

Mustaqeem.