

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36793 of 2022

Applicant :- Pawan

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

Counsel for Applicant :- Deepak Kumar Verma, Akansha Verma, Devendra Singh

Counsel for Opposite Party :- G.A., A/A0102/2016, Anil Kumar Bind

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Devendra Singh, learned counsel for the applicant, Sri Anil Kumar Bind, learned counsel for the first informant and Sri Bade Lal Bind, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Pawan, seeking enlargement on bail during trial in connection with Case Crime No. 134 of 2022, under Sections 376, 504, 506 I.P.C. and Section 3/4 POCSO Act, registered at Police Station Mahewaghat, District Kaushambi.

4. The FIR of the matter was lodged on 21.05.2022 by the victim herself against the applicant alleging therein that she is aged about 17 years. On 13.05.2022 at about 04:00 am when her father had gone on invitation she was alone in the house and sleeping wherein the applicant came there gagged her mouth and committed rape upon her. He left his mobile and while extending threats to her life if she would tell anyone ran away. Her father came back on 16.05.2022 and then she told him about the incident and then FIR has been lodged.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that although the victim states of her being aged about 17 years but as per the certificate of the CMO concerned she has been opined to be of about 19 years of age. It is argued that the medical examination of the victim does not support the prosecution case. It

is argued that the applicant and the victim were known to each other and she is a consenting party. It is argued that although the applicant is named in the statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. but the naming is because of the pressure of the family of the victim. It is argued that the incident is alleged to have taken place on 13.05.2022 of which the FIR has been lodged on 21.05.2022 which is after eight days of the incident. It is argued that even on the own showing of the victim that her father returned on 16.05.2023 after which she told him about the incident but still the FIR was lodged even four days after. He further argued that the applicant has no criminal history as stated in para 16 of the affidavit and is in jail since 26.05.2022.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail. Learned counsel for the first informant although argued that as per the school records the date of birth of the victim recorded therein is 10.08.2005 but he could not show as to how the said entry can be considered in the present matter since the maker of the said entry has not been interrogated during investigation.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the FIR has been lodged after about eight days of the incident and five days of father of the victim being told by her about incident. The delay is unexplained. The victim as per certificate of the CMO concerned is aged about 19 years and is a major. The medical examination does not support the prosecution case.

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 **Pawan**, 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***.

Order Date :- 16.10.2023

M. ARIF

(Samit Gopal, J.)