

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48042 of 2021

Applicant :- Kallu

Opposite Party :- State of U.P.

Counsel for Applicant :- Anuj Bajpai, Suresh Dhar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Atul Kumar Singh, Advocate holding brief of Sri S.D. Dwivedi, learned counsel for the applicant, Sri Dev Nath Mishra, learned counsel for the State and perused the material on record.
2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Kallu seeking enlargement on bail during trial in connection with Case Crime No. 0305/2021 under Sections 452, 376 I.P.C., registered at Police Station Kalan, District Shahjahanpur.
3. FIR of the matter was lodged on 27.06.2021 by the victim herself against the applicant alleging therein that on 26.06.2021 at about 11.00 p.m. while she was sleeping along with her three children in the house, applicant came there and committed rape upon her after which she raised a shout on which, her family members came but the applicant, after opening the door, ran away. Husband of the victim works in Punjab.
4. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. It is argued that medical examination of the victim does not support the prosecution case as the doctor did not opine of any such sexual assault on her. While placing reliance on para 11 of the application, it is argued that FIR was lodged after an unexplained delay of 18 hours and further, the same has been lodged as an afterthought to mount pressure upon the applicant and his family members to enter into compromise in a case which was registered against brother in law (behnoi) of the victim by the sister of the applicant. It is argued that the applicant has no criminal history as stated in para 13 and he is in jail since 29.06.2021.
5. *Per contra*, learned counsel for the State opposed the prayer for

bail.

6. After having heard learned counsels for the parties and perusing the record, it is evident that victim is a married lady; there is litigation going on between brother in law of the victim and sister of the applicant; The trial is going on. Medical examination report does not support the prosecution case, FIR has been lodged after an unexplained delay of 18 hours.

7. Let the applicant **Kallu** 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.

8. 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.

9. The bail application is ***allowed***.

Order Date :- 27.10.2023

Madhurima