

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37514 of 2023

Applicant :- Arbind Rajbhar

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

Counsel for Applicant :- Raghvendra Prakash

Counsel for Opposite Party :- G.A.,Subhash Chandra Yadav

Hon'ble Siddharth,J.

1. Heard Sri Raghvendra Prakash, learned counsel for the applicant; Sri Subhash Chandra Yadav, learned counsel for the informant and learned A.G.A for the State.

2. Supplementary affidavit filed by counsel for the applicant is taken on record.

3. Rejoinder affidavit filed today is also taken on record.

4. FIR was lodged against the applicant and co-accused, Pappu Rajbhar, alleging that today in the night of 08.06.2023 at about 01:00 a.m when daughter of informant aged about 14 years had gone to ease herself in the field, she was abducted by the applicant and co-accused. When she did not come back, informant went in her search and found that the applicant and co-accused committing the offence of sexual harassment against her daughter. When she raised alarm they ran away abusing and threatening the informant.

5. Counsel for the applicant submits that the applicant and co-accused are related as cousin. No incident as alleged ever took place. In the statement of the victim recorded under Section 161 Cr.P.C., she did not make any allegation of commission of offence of gang rape nor any such allegation was made in the FIR. The implication under the provision of POCSO Act and Section 376-DA IPC was made on the basis of statement of victim recorded under Section 164 Cr.P.C to falsely implicate the applicant in this case. There is toilet in the house of the informant and why her daughter went outside to ease herself has not been explained. It is also not clear how the applicant came to know that the victim has gone outside to ease herself at 01:00 a.m in the night. He has submitted that the applicant and co-accused on 23.06.2023 gave an application to Superintendent of Police, Azamgarh to get their

Narco test and D.N.A test conducted since they were falsely implicated in this case. The applicant is in jail since 10.06.2023 and has criminal history of one case explained in supplementary affidavit filed today.

6. On the other hand learned A.G.A has opposed the prayer for bail.

7. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

8. Let the applicant, Arbind Rajbhar, involved in Case Crime No. 233 of 2023, under Sections- 354-A, 376-DA, 504, 506 IPC and Section 3/4(2) of POCSO Act, Police Station- Mehnagar, District- Azamgarh, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

9. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

10. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 27.10.2023

Rohit