

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48453 of 2021

Applicant :- Nazim

Opposite Party :- State of U.P.

Counsel for Applicant :- Dr. Arun Srivastav, Ehtesham Afsar Khan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Shri M. P. Singh, Advocate holding brief of Shri Mohd. Ashraf, learned counsel for the applicant and Shri Brijesh Pratap Singh, learned AGA for the State-respondent.
2. The instant second bail application has been filed seeking release of the applicant on bail in Case Crime No.676 of 2017, under Sections 376, 452 I.P.C., Police Station C. B. Ganj, District Bareilly, during pendency of the trial in the court below.
3. Learned counsel for the applicant submits that this is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by Co-ordinate Bench this Court vide order dated 18.12.2020 passed in Criminal Misc. Bail Application No.20469 of 2019 and he is pressing the instant second bail application mainly on the ground that applicant is in jail since 08.02.2019 i.e. for last more than four and a half years and victim of the case, who was major, has already been examined by the trial court and therefore there is no chance of any tampering with the prosecution evidence and applicant is not having any criminal history to his credit and therefore, considering the long period of incarceration, he may be released on bail.
4. Per contra, learned AGA opposed the prayer for bail and submits

that this is the second bail application filed on behalf of the applicant and first bail application of the applicant was dismissed by Co-ordinate Bench this Court vide order dated 18.12.2020 after considering the entire facts of the case but could not dispute the fact that victim is a major girl and applicant is in jail since February, 2019. Further he could not dispute the fact that victim has already been examined by the trial court and therefore there is no chance of any tampering with the prosecution evidence.

5. I have heard learned counsel for both the parties and perused the record of the case.

6. This is the second bail application filed on behalf of the applicant and first bail application of the applicant has been dismissed by Co-ordinate Bench this Court on merits vide order dated 18.12.2020 but it appears that victim of the case was a major at the time of incident and applicant is in jail since February, 2019.

7. Further from the record, it also reflects that victim has already been examined by the trial court and therefore, I find force in the argument advanced by learned counsel for the applicant that there is no chance of any tampering with the prosecution evidence. Further applicant is not having any criminal history to his credit

8. Therefore, considering the facts and circumstances of the case, discussed above, particularly the fact that applicant is in jail for last more than four and a half years and victim of the case, who was major, has already been examined by the trial court, in my view, applicant is entitled to be enlarged on bail.

9. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

10. Let the applicant- **Nazim**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the

following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

11. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 5.12.2023
Zafar