

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36843 of 2023

Applicant :- Shiv Pratap

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

Counsel for Applicant :- Avdhesh Narayan Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised. As informed by learned A.G.A., notice has been served to the informant on 7.8.2023.

2. Heard learned counsel for the applicant as well as Sri Pankaj Kumar, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No. 58 of 2023, U/S 363, 342, 366 IPC and 7/8 POCSO Act, Police Station Churkhi, District Jalaun, during the pendency of trial.

4. As per prosecution story, the applicant is stated to have enticed away the minor daughter of the informant at some unknown date and time. The FIR was instituted on 29.6.2023.

5. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. He has further stated that no date and time of occurrence has been mentioned in the FIR, as such, the allegations are vague. It is next stated that the victim herself had moved an application before the police station Churkhi, District Jalaun, stating that she was reprimanded by her family members, as such, she wanted to falsely implicate the applicant in a case. The said application has been filed as Annexure 1 to the affidavit. It is also stated that even the statement of the victim recorded u/s 164 Cr.P.C. does not indicate towards any sexual assault. Rather bald and vague allegations have been made. It is further stated that there are inconsistencies in the statement of the victim and the informant. The statement of the victim recorded u/s 164 Cr.P.C. is also contradictory to the FIR. Learned counsel for the applicant has also stated that the matter of age cannot be considered in the

present matter, as there are no allegations of sexual assault.

6. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further stated that there is no criminal history of the applicant. The applicant is languishing in jail since 2.7.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

7. Learned A.G.A. has vehemently opposed the bail application but has not disputed the fact that there is no criminal history of the applicant.

8. Keeping in view the nature of the offence, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India 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.

9. Let the applicant- **Shiv Pratap**, who is involved in aforementioned case crime 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 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.

(ii) The applicant shall remain present before the Trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A IPC.

(iii) 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 IPC.

(iv) 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.

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

11. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

(Justice Krishan Pahal)

Order Date :- 13.10.2023
Shalini