

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37789 of 2023

Applicant :- Salman

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

Counsel for Applicant :- Santosh Kumar Tiwari, Surendra Nath Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Supplementary affidavit filed today in Court by the learned counsel for the applicant is taken on record.
2. Heard Shri S. K. Tiwari, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.
3. This is the second bail application filed on behalf of accused/ applicant-Salman. The first bail application was rejected by a coordinate Bench of this Court vide order dated 21.11.2022 passed in Criminal Misc. Bail Application No. 42095 of 2022.
4. Learned counsel for the applicant submits that after the first bail application of the applicant was rejected, during course of trial in his cross-examination the complainant has stated that he was not present at the spot at the time of incident, his son Abdullah told him about the incident, then he has stated that both Abdullah and Danish told him about the incident, thus, learned counsel for the applicant submits that the complainant has not supported the prosecution case, hence, there is bleak chance that prosecution may prove its case beyond reasonable doubt and the applicant may be convicted. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 11.07.2022, having no criminal history and has already undergone a substantial period of

incarceration, therefore, he deserves to be enlarged on bail sympathetically.

5. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence, but he has not disputed that the complainant in his cross-examination before the trial court has denied that he had seen the incident.

6. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

7. Let applicant-**Salman**, involved in Case Crime No. 194 of 2022, under Sections 376, 452, 323, 506 I.P.C. and Section 3/4 of Protection of Children From Sexual Offences Act, Police Station Quarsi, District Algarh, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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 in accordance with law.

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

Order Date :- 1.11.2023

Mustaqeem.