

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37377 of 2023

Applicant :- Sher Azam Ali

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Maohammad Nadeem, Buddhi Prakash

Counsel for Opposite Party :- G.A., Yashwant Singh

Hon'ble Krishan Pahal, J.

1. List has been revised.
2. Heard Sri Buddhi Prakash, learned counsel for the applicant, Sri Yashwant Singh, learned counsel for the informant as well as Sri S.P. Pandey, learned A.G.A. for the State and perused the material placed on record.
3. Applicant seeks bail in Case Crime No.329 of 2023, under Sections 292, 354-B, 504, 506 I.P.C., 7/8 POCSO Act and 67 Information Technology (Amendment) Act, Police Station- Kannauj, District- Kannauj, during the pendency of trial.
4. As per prosecution case, the applicant and his three other brothers are stated to have outraged the modesty of minor daughter of the informant and are even stated to have taken her indecent photographs and made them viral on social media.
5. Learned counsel for the applicant has stated that he has been falsely implicated in this case. The co-accused person has been enlarged on bail by the Special Judge (POCSO Act)/Additional Sessions Judge, Kannauj itself. The case of the applicant is at par with co-accused person and the only disparity referred is that the applicant is stated to have taken those photographs. Learned counsel has stated that there is no possibility of four real brothers committing the said offence. The allegations made in the FIR are false.
6. Learned counsel for the applicant has further stated that it is also alleged by the prosecution that an application under Section 156(3) Cr.P.C. is pending regarding rape case instituted against the son of the informant. The applicant is languishing in jail since 17.7.2023. He further submitted that since the role of the applicant is identical

to that of co-accused who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity.

7. The prayer for bail has been vehemently opposed by learned counsel for the informant and learned A.G.A. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by them.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in *Nanha S/o Nabhan Kha vs. State of U.P., 1993 Crl.L.J. 938* and the judgement passed by the Apex Court in *Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021*, 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** on the ground of parity.

9. Let the applicant- **Sher Azam Ali**, 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 not tamper with evidence.

(ii) 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.

Order Date :- 16.11.2023

Vikas

[Krishan Pahal, J.]