

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38356 of 2023

Applicant :- Tanzeem@ Tanzeel

Opposite Party :- State of U.P.

Counsel for Applicant :- Nafees Ahmad, Shibli Naseem

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

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Nafees Ahmad, learned counsel for the applicant, Sri Jitendra Singh, learned counsel for the first informant, Sri Vinay Kumar Pandey, learned AGA for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Tanzeem@ Tanzeel, seeking enlargement on bail during trial in connection with Case Crime No. 300 of 2023, under Sections 366, 504, 352, 506, 376D I.P.C. registered at P.S. Jeeyanpur, District Azamgarh.
4. The F.I.R. of the matter was lodged on 8.5.2023 by Abdul Salam against the applicant and 05 other accused persons namely Umar, Mohammad, Mohsiba, Khushnuma and Shahalam alleging therein that his daughter aged about 22 years went from the house without informing anyone. She was searched a lot but could not be traced. She used to talk on phone with Umar the resident of the same village. He has belief that he has enticed away his daughter. When he went to the house of Umar to make a complaint, his elder brother Mohammad and other accused persons abused him and chased him for assault after which he fell down and received injuries. On hearing shouts people of nearby collected and saved him.
5. Learned counsel for the applicant argued that on the own showing in the F.I.R. the victim is aged about 22 years and she is major. It is argued that the victim was subsequently recovered and her statement under Section 161 Cr.P.C. was recorded wherein she stated of having love affair with Umar since last 02 years. She went to his house to meet him and they were staying as husband and wife, after he dropped her near hospital where the applicant came and took her to hospital at Azamgarh and

left her there and then at about 8.30 p.m. the applicant took her to the house of Biddu where other accused persons were present who then sexually assaulted her. She was then taken to the hospital where she was admitted where Golu came and asked her about her well being, after which she married him and was living with him in his house. It is argued that the victim in the statement under Section 164 Cr.P.C. gives a different version wherein she states of the co-accused Umar making false promise to marry and establishing physical relationship since last two years and even all the accused persons including the applicant committing rape upon her. It is argued that going of the victim at various places was not objected by her and she went on her own without any objection whatsoever. It is argued that in so far as the other allegations are concerned, the same are totally concocted and without any evidence. It is argued that medical examination does not corroborate with the prosecution story. It is argued that as per the statements of the victim, she was having love affair with co-accused Umar but later she married Golu. It is argued that the applicant has no other criminal antecedents as stated in para-21 of the affidavit and is in jail since 20.06.2023.

6. Per contra, learned State counsel and learned counsel for the first informant opposed the prayer for bail and it is argued that the applicant is named by the victim along with other co-accused persons in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. during investigation and there are allegation of rape by all accused persons.

7. After having heard learned counsels for the parties and perusing the record, it is evident that on the own showing of the victim, she is major. She stated of having love affair with Umar since last 02 years which could not materialize but after which she married Golu, after which the present F.I.R. has been lodged. Going of the victim at various places was not objected by her. The medical examination does not corroborate with the prosecution story.

8. Looking to 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, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant- Tanzeem@ Tanzeel, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

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.

10. 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 and send the applicant to prison.

11. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 17.10.2023
Naresh