

Court No. - 46

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38601 of 2023

Applicant :- Asim

Opposite Party :- State of U.P.

Counsel for Applicant :- Zafeer Ahmad

Counsel for Opposite Party :- G.A.

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22394 of 2023

Applicant :- Saifurheman @ Rehman

Opposite Party :- State of U.P.

Counsel for Applicant :- Mukesh Joshi

Counsel for Opposite Party :- G.A.

Hon'ble Ashwani Kumar Mishra,J.

This is the second bail application moved on behalf of the accused applicants Asim and Saifurheman @ Rehman seeking enlargement on bail in Case Crime No. 349 of 2021, under Sections 376-D, 506 I.P.C. and Section 67 of the Information Technology (Amendment) Act, 2008, Police Station - Mundhapandey, District - Moradabad.

The first bail application of the accused applicant Saifurheman @ Rehman was rejected on 23.5.2022 and the trial was directed to be concluded within a period of 14 months.

As per the prosecution case the victim has been subjected to gang rape by seven persons.

Counsel for the applicants submits that the allegation made by the prosecutrix is not supported by medical evidence on record and the trial otherwise has not concluded within the time specified by this Court. The testimony of victim and the informant alone have been recorded so far. It is submitted that the co-accused Irtaza has been enlarged on bail by a co-ordinate bench of this Court in Criminal Misc. Bail Application No. 51065 of 2022 on 27.9.2023. Parity is claimed in the matter of grant of bail. Submission is that as the statement of victim and the informant have already been recorded there is no possibility of any tampering and the trial is likely to take sufficiently long and the applicants otherwise have no criminal history, therefore, they be enlarged on bail. The applicants undertake that they will not misuse the liberty of

bail and will cooperate in the conduct of trial.

Learned AGA has opposed the bail applications but could not dispute the aforesaid fact.

Having considered the respective submissions advanced as also considering the fact that allegation made by the prosecutrix is not supported by medical evidence on record and the trial otherwise has not concluded within the time specified by this Court and co-accused Irtaza has already been enlarged on bail by a co-ordinate bench of this Court and the applicants otherwise have no criminal history, without further commenting upon the merits of the case, the applicants are entitled to be released on bail, at this stage. Above observations made in the bail order shall, however, not be construed as expression of opinion, on the merits, at the stage of trial.

Let the applicants - **Asim and Saifurheman @ Rehman** involved in aforesaid case crime be released on bail on their 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 applicants will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicants 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 applicants shall file an undertaking to the effect that they shall not seek any adjournment on the dates 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(v) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal

Code.

(vi) The applicants shall remain present, in person, before the trial court on the 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 applicants 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 them in accordance with law.

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 applicants to prison.

Accordingly, the present bail applications are allowed.

Order Date :- 2.11.2023

Ranjeet Sahu