

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40397 of 2023

Applicant :- Shyamu Tiwari

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

Counsel for Applicant :- Babban Singh Rathore

Counsel for Opposite Party :- G.A.,Dileep Kumar Vishwakarma,Vikas Singh

Hon'ble Krishan Pahal,J.

1. List has been revised. This is the second bail application. First bail application was rejected by this Court vide order dated 1.3.2023 passed in Criminal Misc. Bail Application No. 38108 of 2020.

2. Heard Sri Babban Singh Rathore, learned counsel for the applicant, Sri Jagdish Prasad Chaurasia, learned Advocate holding brief for Sri Dileep Kumar Vishwakarma, learned counsel for the informant as well as Sri Shakeel Ahmad, learned A.G.A. for the State and perused the material placed on record.

3. Applicant seeks bail in Case Crime No. 79 of 2020, U/S 376, 306 IPC and 3/4 of Protection of Children from Sexual Offence Act, 2012, Police Station Kalyanpur, District Fatehpur, during the pendency of trial.

4. Learned counsel for the applicant has stated that as a new ground, subsequently three other witnesses have been examined, as such, four statements of the witnesses of fact have been recorded by the Court. Learned counsel has next stated that the applicant is languishing in jail since 25.5.2020, as such, he has been incarcerated for more than three and a half years. It is next stated that the applicant is entitled for bail, as his fundamental rights enshrined in Article 21 of the Constitution of India stands violated. In case, the applicant is released on bail, he will not misuse the liberty of bail.

5. Per contra, learned A.G.A. and learned counsel for the informant have vehemently opposed the bail application on the ground that the witnesses of fact have supported the prosecution story and the applicant is the sole and the main accused person and he is not

entitled for bail.

6. Since no new ground has been given by learned counsel for the applicant, I do not find it a fit case for bail. Without expressing any opinion on the merits of the case, this Court is not inclined to release the applicant on bail.

7. The bail application is, accordingly, **rejected**.

8. However, it is directed that the aforesaid case pending before the trial court be decided expeditiously, in view of the principle laid down in the recent judgements of the Apex Court in the cases of **Vinod Kumar vs. State of Punjab 2015 (3) SCC 220** and **Hussain and Another vs. Union of India (2017) 5 SCC 702**, if there is no legal impediment.

9. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

(Justice Krishan Pahal)

Order Date :- 17.11.2023

Shalini