

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39344 of 2023

Applicant :- Kamal Kumar

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

Counsel for Applicant :- Brijesh Kumar Mishra, Janardan Prasad Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Learned AGA submits that notice of the instant application has been served upon the opposite party no.2-informant and opposite party no.3-Child Welfare Committee on 03.09.2023 and 05.09.2023 respectively. However, when the case is taken up no one appears on their behalf nor any counter affidavit has been filed. Receiving endorsements produced by learned AGA, are taken on record.
3. Heard learned counsel for the applicant and Sri V.P.Tripathi, learned AGA for the State-respondent.
4. The present bail application has been filed by the applicant-Kamal Kumar to enlarge him on bail in Sessions Trial No. 68 of 2016 arising out of Case Crime No. 446 of 2014, under Section 354Gha IPC and Section 12 of POCSO Act, Police Station Ghandhi Park, District Aligarh, during the pendency of trial.
5. Counsel for the applicant submits that earlier the applicant was granted bail by the trial court on 05.10.2018. Though, the applicant participated in the trial for considerable period, the trial could not conclude and at the same time due to unavoidable reasons the applicant could not appear before the court concerned on certain dates. Consequently, non-bailable warrant was issued. The applicant surrendered before the court concerned on 13.08.2023 and since then he is in jail. Learned counsel for the applicant on the basis of instructions submits that if the applicant is enlarged on bail, he shall appear regularly before the trial court and shall not leave the station without permission of the court concerned.
6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.
7. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the applicant had earlier

appeared and contested the proceedings, however, the trial could not conclude and further the applicant has presently remained confined for more than three months and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant- **Kamal Kumar**, involved in the aforesaid case be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses; and,
- (iv) shall not leave district without the leave of the trial court.

9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 28.11.2023

Lbm/-