

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51889 of 2021

Applicant :- Virendra @ Veera

Opposite Party :- State Of U.P Thru Secretary Home Lknw.

Counsel for Applicant :- Shivesh Mishra,Manoj Kumar Gupta

Counsel for Opposite Party :- G.A.,Darwari Lal,Ram Kumar Dubey

Hon'ble Ajay Bhanot,J.

Matter is called out. None appears for the applicant to press the bail application. The names of the learned counsel for the applicant are shown in the cause list. Learned A.G.A. for the State is present.

Learned counsel at the Bar has been requested to assist the Court in the matter. This Court in the light of the holding in Maneesh Pathak vs. State of U.P. passed in Criminal Misc. Bail Application No. 18536 of 2020 is not dismissing the case for non prosecution. Learned members at the Bar have volunteered to assist the Court pro bono in the highest tradition of the profession. The Court has appointed learned counsel as amicus curiae.

By means of the the bail application the applicant has prayed to be enlarged on bail in Case Crime No.389 of 2021 at Police Station-Bhojipura District-Bareilly under Sections 376 IPC. The applicant is in jail since 07.10.2021.

The bail application of the applicant was rejected by the learned trial court on 08.12.2021.

The following arguments made by Shri Shamshad Ahmad, learned amicus curiae on behalf of the applicant, which could not be satisfactorily refuted by Shri Sudarshan Singh, learned counsel for the informant and Shri Paritosh Kumar Malviya, learned AGA-I from the record, entitle the applicant for grant of bail:

1. The delay of two days in lodgment of the F.I.R. in the facts and circumstances of the case is fatal to the prosecution case.
2. The FIR is a result of petty neighbourhood dispute.
3. No allegation of commission or rape by the applicant with the victim has been made in the F.I.R.
4. Subsequently at a belated stage aggravated allegations were made by the victim in her statement under Section 161 Cr.P.C. Thereafter further contradictory and false allegations were made in her statement under Section 164 Cr.P.C. and her later statement before the police investigators.
5. Major contradictions in the FIR, the statements under Section 161 Cr.P.C. and 164 Cr.P.C. discredit the prosecution case.
6. Medical evidence to corroborate commission of rape by the applicant with the victim has not been produced by the prosecution.

7. The applicant does not have any criminal history apart from this case.

8. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Virendra @ Veera 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 below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

The District Legal Services Authority (DLSA), Bareilly ensure that appropriate legal aid is made available to the applicant for purposes of submitting sureties and completion of other formalities for being set forth at liberty.

Registry is directed to send a copy of this order to the District Legal Services Authority (DLSA), Bareilly for onward communication to the applicant who is in jail, and for assisting the applicant in the manner stated above.

The Court appreciates the assistance rendered by Shri Shamshad Ahmad, Amicus Curiae. High Court Legal Services Authority may kindly make the fee payment to Shri Shamshad Ahmad, Advocate on the approved remuneration who represented the applicant as Amicus Curiae before this Court.

Registry to ensure that the Hindi translation of the order shall be provided to the accused in jail forthwith.

Order Date :- 16.10.2023
Ashish Tripathi