

Court No. - 85

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41204 of 2023

Applicant :- Waris Ali

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

Counsel for Applicant :- Shreya Gupta, Ravi Anand Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Mayank Kumar Jain, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and learned counsel for the opposite party no.2 and perused the record.
2. The present second bail application has been filed on behalf of applicant in Case Crime No. 367 of 2022, under Sections 376 of IPC and under Section 5/6 POCSO Act, Police Station Jawan, District Aligarh with the prayer to enlarge the applicant on bail. First bail application was rejected by this Court vide order dated 24.05.2023 in Criminal Misc. Bail Application No.10016 of 2023.
3. It has been argued by learned counsel for the applicant submitted that applicant that some material fact were not brought to the notice of the Court at the time of argument of first bail application.
4. The statement of the victim recorded under Section 164 Cr.P.C was referred and it is argued that the victim has stated that "Dada" committed indecent activities with her who is her neighbour, the name of the son of "Dada" is Waris (the applicant), therefore, the identity of the applicant is doubtful.
5. It is further submitted that the mother of the victim was asked by the Investigating Officer as to whether her daughter was raped or only indecent activities were committed by the accused, she replied that she would not be able to answer this question without consulting her lawyer, therefore, it is submitted that entire proceedings are projected on the basis of the legal advice.
6. Learned counsel for the applicant referred the order sheet brought on record that the charge in this case has been framed on 06.03.2023 and thereafter bailable warrant were issued against the

informant but he is not turning up for evidence as such there is no substantial progress in the trial while the applicant is languishing in jail since 17.01.2023.

7. It is also submitted that earlier to the F.I.R of the informant, the F.I.R having case crime no. 338 of 2022 was lodged on 17.11.2022 against Gulfam who is the nephew of the informant while the present F.I.R has been lodged on 10.12.2022 as a counter blast of that case.

8. The age of the applicant is 70 years, the wife of the applicant passed away 3 to 4 days before when the applicant was confined to jail.

9. Per contra, learned A.G.A. has opposed the bail application of the applicant and submitted that the age of the victim is 4-5 years but could not dispute the aspect that the informant was not co-operating with the trial and bailable warrant were issued against him and the applicant is in jail, moreover, the factum of the F.I.R lodged earlier to this case as well the argument of the learned counsel for the applicant that the entire proceedings are projected on the basis of legal advice is not disputed.

10. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

11. Let the applicant **Waris Ali** in the aforesaid crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of court concerned subject to the following conditions:

(1). The applicant will not tamper with the prosecution evidence during the trial.

(2). The applicant will not influence any witness.

(3). The applicant will appear before the trial Court on the date fixed without fail on the very first date of every month and will put his attendance, unless personal presence is exempted.

(4). The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the

facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

12. In case of breach of any of the above condition, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the bail.

13. However, the trial court is directed to record the statements of the victim within a period of two months from the date of receipt of certified copy of this order

Order Date :- 22.11.2023

PS