Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41653 of 2023

Applicant :- Afazal And Another
Opposite Party :- State of U.P.
Counsel for Applicant :- Neeraj Srivastava
Counsel for Opposite Party :- G.A.,Onkar Singh,Sachin Malik

Hon'ble Vikram D. Chauhan,J.

1. Learned A.G.A. for the State submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

3. It is submitted by learned counsel for the applicants that as per allegations in the first information report, nominated accused persons have assaulted the victim, as a result of the same, abortion has taken place. Learned counsel for the applicants has drawn attention of the Court to the report of Gynecologist, who stated that abortion is due to natural defensive mechanism (due to defective chromosome weak embryo) detected at 6 week of gestation. No definite opinion regarding missed abortion being due to trauma can be given.

3-A. Learned counsel for the applicant submits that there is no evidence that the abortion of the victim has taken place on account of any assault. There is no external injury found on the body of the victim, although there is evidence of assault. The applicants have no previous criminal history. Applicants are languishing in jail since 01.09.2023 and in case they are released on bail, they will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for the informant Sri Sachin Malik submits that there is statement of witnesses that applicants and accused persons have assaulted the victim, however, he does not dispute the report of Gynecologist, where, it is stated that abortion is due to natural defensive mechanism.

5. Learned A.G.A. for the State opposed the prayer for bail but does not dispute factual matrix of the case.

5-A. Learned AGA for the State has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicants for Bail.

6. It is not the case of the State that the applicants have not cooperated in the investigation or proceedings before the trial court.

7. The principle that Bail is a rule and Jail is an exception has been well recognised by Apex Court more specifically on the touch stone of Article 21 of the Constitution. The said principle has been reiterated by the Apex Court in **Satyendra Kumar Antil Vs. Central Bureau of Investigation and another, 2022 (10) SCC 51**. Learned AGA for the State has not shown any exceptional circumstances which would warrant denial of bail to the applicant.

8. No material, facts or circumstances has been shown by learned AGA for the State that the accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

9. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA for the State.

10. Learned AGA for the State has not shown any material or circumstances that the accused/applicants are not entitled to bail in larger interests of the public or State.

11. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties and without expressing any opinion on the merits of the case, the Court is of the view that the applicants have made out a case for bail. The bail application is allowed.

12. Let the applicants **Afazal** and **Sharoof** involved in Case Crime No. 380 of 2022, under Sections 147, 323, 313 I.P.C., Police Station Thana, District Shamli, be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

i. The applicants will not tamper with the evidence during the trial.

ii. The applicants will not pressurize/intimidate the prosecution witness.

iii. The applicants will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicants shall make themselves available for interrogation by a police officer as and when required.

iv. The applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected.

v. The applicants 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 them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicants shall not leave India without the previous permission of the Court.

vii. In the event, the applicants change residential address, the applicants shall inform the court concerned about new residential address in writing.

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

Order Date :- 19.10.2023
S.Prakash

Digitally signed by :-
SHASHI PRAKASH
High Court of Judicature at Allahabad