

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42004 of 2023

Applicant :- Nitin Pal

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

Counsel for Applicant :- Sudhir Kumar Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned A.G.A. submits that notice of the instant application has been served on the informant/opposite party no. 2 and opposite party no. 3/C.W.C. on 18.09.2023. The relevant endorsements have been produced by the learned A.G.A. The same are taken on record. However, when the case is called out, none appears on behalf of the said opposite parties nor any counter affidavit has been filed on their behalf.
2. Heard counsel for the applicant and learned A.G.A. for the State-opposite party.
3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 126 of 2023 under Sections 363, 366A & 120B of I.P.C., Section 16/17 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)5 of the SC/ST Act, Police Station- Nai Mandi, District- Muzaffar Nagar, during the pendency of the trial.
4. Counsel for the applicant contends that the applicant was not named in the first information report and has been falsely implicated in the present case. The incident is alleged to have occurred on 28.12.2022. The first information report was lodged on 15.03.2023. The inordinate delay in lodging the F.I.R. is fatal to the prosecution case. There are major inconsistencies in the statements of the victim under Section 161 Cr.P.C. and 164 Cr.P.C. In her statement under Section 161 Cr.P.C., she stated that she left her house voluntarily. There are no allegations of abduction, kidnapping or sexual assault against the applicant. However, upon the victim going into the custody of her parents, an entirely different version was narrated. Allegation of sexual assault was levelled against the co-accused, Chhotu. It is next contended that the co-accused, Chhotu has been granted bail by this Court in Criminal Misc. Bail Application No. 29874 of 2023 vide order dated 10.07.2023. The applicant is in jail since 13.04.2023, having no criminal history. In case he is enlarged on bail, he will not

misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record this Court prima facie finds that the applicant was not named in the first information report. There are major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. The co-accused, Chhotu has been granted bail by this Court. Further, the applicant has no criminal antecedents and has remained confined for more than six months and after submission of the charge-sheet 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 delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- **Nitin Pal**, involved in aforesaid case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the 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.

8. 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 :- 17.10.2023

Sachin Mishra