

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41481 of 2023

Applicant :- Monu

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

Counsel for Applicant :- Abhishek Kumar Jaiswal, Sumant Krishna Singh

Counsel for Opposite Party :- G.A., Dhirendra Kumar Verma, Srawan Kumar Swarnkar

Hon'ble Vivek Varma, J.

1. Learned A.G.A. on the basis of instructions submits that notice of the instant bail application has been served upon the opposite party no. 2- informant on 28.09.2023 as well as upon the opposite party no. 4- Child Welfare Committee, Baghpat on 26.09.2023. The receiving endorsements as produced by the learned A.G.A. are taken on record. However, when the case is taken up, no one appears on behalf of the opposite party nos. 2 and 4 nor any counter affidavit has been filed on their behalf.

2. Heard learned 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. 72 of 2023, under Sections 363, 354-A, 506 I.P.C. and 7/8 Protection of Children from Sexual Offences Act, Police Station Chandinagar, District Baghpat during the pendency of the trial.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case. There are inconsistencies in the statements of the victim under Sections 161 and 164 Cr.P.C. In the statement under Section 161 Cr.P.C. the victim stated that she left her house voluntarily and went with the applicant to Ghaziabad and from there to Hyderabad and stayed there for 10-12 days. In the statement under Section 164 Cr.P.C. the victim did not name the applicant. The victim has not made any allegation of inappropriate behaviour against the applicant. The applicant is in jail since 31.07.2023 having no criminal history and if he is released 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 learned counsel for the parties and after perusal of the record, this Court prima facie finds that there are inconsistencies in the statements of the victim under Sections 161 and 164 Cr.P.C. The applicant has no criminal antecedents. Moreover, the applicant has remained confined for almost three months and after submission of the charge-sheet there is no hope of early conclusion of trial, and 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, therefore, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant- Monu, involved in the aforesaid case, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of 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; and,
- (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 :- 31.10.2023
SKT/-