

**Court No. - 74**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 44609 of 2023

**Applicant :-** Shailendra Rathor

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

**Counsel for Applicant :-** Shivbaboo

**Counsel for Opposite Party :-** G.A.,Gunjan Sharma

**Hon'ble Vivek Varma,J.**

1. Learned AGA submits that notice of the instant application has been served on the opposite party no.2-informant and opposite party no.4-Child Welfare Committee on 04.10.2023 and 07.10.2023 respectively. However, when the case is taken up no one appears on their behalf nor any counter affidavit has been filed. Receiving endorsements produced by learned AGA, are taken on record.

2. Heard learned counsel for the applicant, Sri Anupam Anand, learned Brief Holder for the State-respondent and Ms. Gunjan Sharma, learned counsel for the opposite party no.3 as well as perused the record.

3. The instant bail application under Section 439 Cr.P.C. has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 132 of 2023, under Sections 354B, 323 IPC and Section 7/8 POCSO Act, Police Station Kalyanpur, District Kanpur Nagar, during the pendency of trial.

4. Counsel for the applicant submits that the applicant was not arrested at the spot and has been falsely implicated in the present case, owing to certain other dispute between the parties. The applicant did not act inappropriately with the victim. The victim is a major girl. There are contradictions in the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. Material changes have been made in the statement of the victim under Section 164 Cr.P.C. to aggravate the offence and save the failing prosecution case. Further, the alleged eye witness also narrated a different version. The aforesaid inconsistencies discredit the prosecution case. As per the medical report, no external injury was seen. The applicant is in jail since 12.04.2023 having no criminal history and in case he is enlarged on bail, he will not misuse the said liberty.

5. Learned AGA 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 arrested at the spot. There are inconsistencies in the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. The applicant has no criminal antecedents. The applicant has remained confined for almost seven 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 the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Shailendra Rathor**, 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 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; 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 :- 7.11.2023**

Lbm/-