

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42218 of 2023

Applicant :- Aneesh Kanjadh

Opposite Party :- State of U.P.

Counsel for Applicant :- Sriram Dhar Dubey, Gaurav Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Sriram Dhar Dubey, learned counsel for the applicant and Sri Birendra Pratap Singh, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Aneesh Kanjadh**, seeking enlargement on bail during trial in connection with Case Crime No. 165 of 2021, under Sections 366, 376, 120-B I.P.C., Police Station Khajni, District Gorakhpur.

3. The first information report of the present matter was lodged on 17.06.2021 by Bahadur against Neetu alleging therein that she is his neighbour who has lured his daughter and took her away. Her mobile is switched off. A report be lodged and action be taken.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim is a major girl aged about 18 years and 06 months having her date of birth as 01.01.2003. It is argued that the victim in her statement recorded under Section 161 Cr.P.C. states of Neetu taking her away by luring her to Lucknow along with one person named Satya where the applicant met them and she went to his room where she stayed overnight and then on the next day roamed about in a park after which she asked Neetu as to where she is taking her to which she stated her that she is taking her to her love and gave her number to Aneesh. She told her to drop her back to her house on which she was assaulted after which she was taken to Ghaziabad where Aneesh established physical relationship. When she objected to it then Neetu stated that in love everything is possible. She was locked in the room with Aneesh and Neetu was peeping from window. Aneesh established physical relationship with her for about 1 ^{1/2} months. It is argued that the victim in her statement recorded under Section 164 Cr.P.C. states of Neetu taking her away to Lucknow along with a person named Satya where they stayed for 03 days where the applicant was also present. The applicant committed rape upon her. She called her mother on phone and then came back. It is argued that the entire statement of the victim goes to show that she was a consenting party. She travelled to various places without any resistance. She then roamed about in a park which is a public place but did not raise any objection or resentment about it. It is argued that co-accused Satya @ Golu has been granted bail by the

Additinal District & Sessions Judge / Fast Track Court, (Crime Against Women), Gorakhpur, vide order dated 05.07.2023 passed in Bail Application No. 4268 of 2023, the copy of the said order is annexed as Annexure-9 to the affidavit. The applicant has no criminal history as stated in para 20 of the affidavit and is in jail since 01.06.2022.

5. *Per contra*, learned counsel for the State opposed the prayer for bail. It is argued that the applicant is named in the first information report, statements of the victim recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. and is stated to have committed rape upon the victim. It is argued that charge-sheet in the matter has been submitted against the applicant and other accused persons. It is argued that the bail application thus deserves to be rejected.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the victim is a major girl. She roamed with the accused persons to various places including public place without any objection or resistance. Co-accused Satya @ Golu has been granted bail.

7. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

8. Let the applicant- **Aneesh Kanjadh**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one of the sureties will be of family members and the other will be of a local person**) each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of

statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

9. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

10. The bail application is **allowed**.

Order Date :- 17.10.2023

AS Rathore

(Samit Gopal,J.)