

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42450 of 2023

Applicant :- Sanjeev

Opposite Party :- State of U.P.

Counsel for Applicant :- Kamlesh Kumar

Counsel for Opposite Party :- G.A.,Ravi Prakash Singh

Hon'ble Siddharth,J.

1. Heard Sri Kamlesh Kumar, learned counsel for the applicant; Sri Ravi Prakash Singh, learned counsel for the informant and learned A.G.A for the State.

2. Supplementary affidavit filed today is taken on record.

3. Counter affidavit filed by counsel for the informant today is also taken on record.

4. There is allegation in the FIR lodged by way of application under section 156(3) Cr.P.C that the applicant and co-accused, Shivkumar and Kaushindra, stopped the victim on 15.11.2021 in the way when she was returning back after taking medicine on the motorcycle at 8:30 p.m of her nephew, Nikky. They threatened the victim and dragged her inside the Mango grove and committed the offence of rape one by one on the gun point. They tied Nikky to the tree. They also snatched her golden chain and Rs. 300/- in the purse. She reached police station but police did nothing and thereafter she sent an application to Superintendent of Police, Amroha on 16.11.2021 by the registered post but when nothing happened application was filed by her under section 156(3) Cr.P.C., whereon FIR was registered on 3.12.2021.

5. Learned counsel for the applicant submits that it is a case of false implication of the applicant. After investigation, investigating officer has found from the statements of the independent witness that there is prior enmity between the prosecutrix and the applicant side because her husband, Manoj Kumar and brother-in-law, Sanjay Kumar, were sent to jail in the murder of one, Nihal Singh, uncle of applicant and thereafter they were enlarged on bail. Later final report was submitted on 16.1.2023 by the investigating officer in this case and against the submission of final report a

protest petition was filed by the informant whereon the applicant was summoned for facing trial under sections 376-D, 394 and 506 IPC. The applicant challenged the same by means of Criminal Revision No. 90 of 2022 and was dismissed. Thereafter, discharge application was filed by the applicant which was also rejected by the court below. He is willing to cooperate with the trial and is in jail since 28.08.2023.

6. Learned counsel for the informant has vehemently opposed the bail application along with A.G.A. He has submitted that the applicant is an influential person and he managed to get the final report submitted. It was only after filing of protest petition that the applicant was summoned. The witnesses have made clear allegations against the applicant.

7. Learned A.G.A has also opposed the prayer for bail.

8. After hearing the rival submissions, this Court finds that the victim has alleged that offence was committed by three persons in a mango grove in night. In her medical examination, no injury has been found on any part of her body. Even a scratch has not been found which may indicate commission of alleged offence against the victim. The applicant does not appears to have criminal history and there is also prior enmity between the parties which is admitted.

9. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of **Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021**; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

10. Let the applicant, Sanjeev, involved in Case Crime No. 339 of 2021, under Sections- 376-D, 394, 506 IPC, Police Station- Amroha Dehat, District- Amroha, 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

following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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. is issued and the 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

11. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

12. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 27.10.2023

Rohit