

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44307 of 2023

Applicant :- Sajid

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Zafar Abbas, Sarve Nazir

Counsel for Opposite Party :- G.A., Faheem Ahmad

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Sarve Nazir, learned counsel for the applicant, Sri Faheem Ahmad, learned counsel for the first informant and Sri Vinay Kumar Pandey, learned counsel for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sajid, seeking enlargement on bail during trial in connection with Case Crime No. 226 of 2023, under Sections 376-D, 328, 366, 342, 323, 506 I.P.C., registered at Police Station Hayatnagar, District Sambhal.
4. Learned counsel for the first informant states that he has filed a short counter affidavit along with his vakalatnama in the office. The same is not on record. A photocopy of the same has been produced before the Court which is taken on record.
5. Office is directed to trace out the same and place it on record and make a note in the order sheet.
6. The FIR of the matter was lodged by the victim against the applicant, Shoaeb and Furkan on the basis of an application moved under Section 156(3) Cr.P.C. alleging therein that on 12.02.2023 at about 05: 00 am she went to give grass to the animals where the accused persons lying in wait gagged her mouth and took her in a car and while extending threats took her away and told to the driver to move fast driving. Later on, the applicant Sajid and Furkan caught hold of her hands and Shoaeb committed rape upon her. She was taken to Delhi and locked in a room after which the accused persons used to give her some intoxicating tablets after which she lost her sense where the accused persons fulfilled their

lust.

7. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that although the applicant is named in the First Information Report and role has been assigned to the applicant but in the statements of the victim recorded under Section 161 Cr.P.C. she states of the applicant and co-accused Furkan catching hold of her hands and legs and gagged her mouth after which Shoaeb is stated to have committed rape upon her. It is argued that there is no allegation against the applicant of committing rape upon her in the said statement. It is further argued that in the statement of the victim recorded under Section 164 Cr.P.C. there is no allegation of the applicant of committing rape upon the victim. It is argued that as such the prosecution version is not consistent in so far as the applicant is concerned with regards to the allegation of rape by him upon the victim. It is further argued that the victim is aged about 21 years as stated in her statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. and as such she is a major. It is further argued that the victim and co-accused Shoaeb have solemnized Nikah on 08.09.2020, copy of Nikahnama has been placed before the Court which is annexure 2 to the affidavit in support of the bail application. He further argued that the applicant has no criminal history as stated in para 4 of the affidavit and is in jail since 26.07.2023.

8. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the applicant is named in the FIR and there is an allegation of his taking away the victim with other accused persons after which he is stated to have caught hold hands and legs of the victim with another co-accused Furkan after which co-accused Shoaeb is stated to have committed rape upon her. It is further argued that the applicant and other co-accused persons are stated to have committed rape upon her after giving some intoxicating tablets but could not dispute with regards to the version given by the victim in her statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. where there is no allegation of rape against the applicant.

9. After having heard learned counsels for the parties and perusing the records, it is evident that the victim is a major girl. The allegation of rape against the applicant is missing in the said statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. There are contradictions in the version as stated by the victim in the FIR, in her statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C.

10. 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.

11. Let the applicant **Sajid**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties 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.

12. 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.

13. The bail application is ***allowed***.

Order Date :- 18.10.2023

M. ARIF

(Samit Gopal, J.)