

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44049 of 2023

Applicant :- Mohit Gupta

Opposite Party :- State of U.P.

Counsel for Applicant :- Anil Pratap Singh Raghav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Anil Pratap Singh Raghav, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 66 of 2022, under Sections 377 IPC & Section 5 m/6 POCSO Act, Police Station Khurja, District Bulandhsahr, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the second bail applicant filed on behalf of the applicant. The first bail application of the applicant has been dismissed on 24.2.2023 by this Court and instant second bail application is being pressed on the ground that applicant is in jail in the present matter since 9.3.2022 i.e. for more than one and half years and till date victim of the case i.e. son of the informant could not appear before the trial court.

4. He further submitted that informant of the case has already appeared before the trial court but he did not support the prosecution case and he had been declared hostile and therefore, there is possibility that he will not produce the victim of the case before the trial court.

5. He further submitted that applicant is having no criminal history apart from the present case.

6. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

7. I have heard learned counsel for the parties and perused the

record of the case.

8. However, this is second bail application filed on the applicant and the first bail application of the applicant has already been dismissed on merit by this Court on 24.2.2023 and from perusal of the order dated 24.2.2023 it appears that informant of the case has already turned hostile.

9. Further, applicant is having no criminal history apart from the present case and applicant is in jail in the present matter since 9.3.2022 i.e. for more than one and half years but till date victim of the case could not be appeared before the trial court.

10. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

11. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

12. Let the applicant-**Mohit Gupta**, be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

13. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 1.11.2023

Ankita