

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51144 of 2022

Applicant :- Suraj Saini

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

Counsel for Applicant :- Anil Kumar Bind, Dharmendra Kumar Singh, Lavkush Kumar Bhatt

Counsel for Opposite Party :- G.A., Raj Narayan Gupta

Hon'ble Vivek Varma, J.

1. Third Supplementary affidavit filed by the counsel for the applicant, is taken on record.
2. Heard Sri Lavkush Kumar Bhatt, learned counsel for the applicant, Sri Anupam Anand, learned Brief Holder for the State-respondent and Sri Raj Narayan Gupta, learned counsel for the informant.
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.622 of 2022, under Sections 354, 504, 506 IPC and Section 7/8 of the Protection of Children From Sexual Offences Act, Police Station Kotwali, District Farrukhabad, during the pendency of trial.
4. Counsel for the applicant submits that applicant has been falsely implicated in the instant case. The victim is major girl. It is a case of failed relationship between the parties. The applicant and victim used to chat on whatsapp, in this regard reliance has been placed on Annexure-SA-I to the first supplementary affidavit. The allegations have emerged solely on account of the fact that the parents of the victim have totally disapproved the conduct of the applicant. Further, there are inconsistencies in the FIR and statement of the victim recorded under Section 161 Cr.P.C. on one hand and in the statement of victim under Section 164 Cr.P.C. on the other. As per the statement under Section 164 Cr.P.C. the applicant had caught hold the hand of the victim and pulled her. The said inconsistencies discredit the prosecution case. The applicant did not act inappropriately with the victim. The applicant did not capture or circulate any indecent video of the victim and same have not being recovered from his possession. The trial is moving at a snail's pace and is not likely to conclude early. The applicant is not responsible for the delay in the trial. Inordinate

delay in concluding the trial has led to virtually and indefinite imprisonment of the applicant. The criminal history of the applicant has been explained in para-3 and 4 to the third supplementary affidavit. The applicant is in jail since 21.09.2022 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 and victim used to chat on whatsapp. There are inconsistencies in the FIR and statement of the victim recorded under Section 161 Cr.P.C. on one hand and in the statement of victim under Section 164 Cr.P.C. on the other. No indecent video of the victim was recovered by the Investigating Officer. At present, there is no substantive evidence against the applicant. Further, the applicant has remained confined for more than one year and two months and 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 merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

7. Let the applicant **Suraj Saini**, 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;

(iii) shall not pressurize the prosecution witnesses.

(iv) shall appear first Sunday of every month in the concerned police station.

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 :- 4.12.2023/Amit/-