

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43855 of 2023

Applicant :- Om Prakash Rajbhar

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

Counsel for Applicant :- Yogeshwar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA submits that notice of the instant application has been served on the informant/opposite party no.2 on 08.10.2023 and on the Child Welfare Committee (CWC), Ballia/opposite party no.4 on 10.10.2023. However, when the instant case is taken up, no one appears on behalf of the said opposite parties nor any counter affidavit has been filed on their behalf.

2. The relevant endorsements have been produced by the learned AGA. The same are taken on record.

3. Heard learned counsel for the applicant as well as learned A.G.A. for the State of U.P. and perused the record.

4. 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.303 of 2023, under Sections 354(kha), 323, 504, 506 IPC and Section 7/8 POCSO Act, Police Station Sikandarpur, District Ballia, during the pendency of trial.

5. Counsel for the applicant contends that applicant has been falsely implicated in the instant case owing to certain other disputes between the parties. The incident is alleged to have occurred on 13.09.2023 and the first information report was lodged on 14.09.2023. The delay in the facts of the present case is fatal to the prosecution case. The applicant did not act inappropriately with the victim. The victim refused to get herself medically examined. In the alleged incident, the victim has not received any injury. There are inconsistencies in the FIR on the one hand and the statements of the victim under Section 161 CrPC and Section 164 CrPC on the other.

At present, there is no evidence to link the applicant with the offence. The applicant is in jail since 15.09.2023 having no criminal history.

6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

7. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the FIR has been lodged belatedly. There is no medical report available to support the allegations in the FIR. At present there is no substantive evidence against the applicant. Further, the applicant has remained confined for more than one month and 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 the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant Om Prakash Rajbhar, 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;

9. 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 :- 30.10.2023

Priya