

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43227 of 2023

Applicant :- Golu Patel

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

Counsel for Applicant :- Abhishek Kumar Chaubey

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA on the basis of instructions submits that the notice of the instant application has been served personally on opposite party no.3/informant on 7.10.2023. The notice has also been served in the office of opposite party no.4 on 12.10.2023. However when the case called out none appears on behalf of the said opposite parties nor any counter affidavit has been filed.

2. Heard learned Counsel for the applicant, Sri N.K. Sharma, learned A.G.A. for the State and perused the record.

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. 63 of 2023, under Sections 377, 506 I.P.C., Section 3/4 (2), 5m/6 of POCSO Act, Police Station- Raipur, District- Sonbhadra during pendency of the trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. The incident is alleged to have occurred on 10.8.2023 and the first information report was lodged on 17.8.2023. The delay in the facts of the present case is fatal to the prosecution case. The applicant did not act inappropriately with the two victims. There are inconsistencies in the statements of the victims under Sections 161 Cr.P.C. and 164 Cr.P.C. The said inconsistencies discredit the prosecution case. Counsel for the applicant has also drawn the attention of the court towards the statement of the doctor annexed as Annexure-11 to the bail application, wherein it has been stated that no external and internal injury at the time of examination was seen around the anal area. The applicant does not have any criminal history. The applicant is in jail since 17.8.2023. In case he is enlarged on bail, he will not misuse the said liberty.

5. Learned A.G.A. 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 delay in lodging the first information report is fatal to the prosecution case. As per the statement of the doctor no external and internal injury was seen around the anal area. There are inconsistencies in the statement of the victims under Sections 161 Cr.P.C. and 164 Cr.P.C. Further, the applicant has no criminal antecedents. The applicant has presently remained confined for more than three 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 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.

7. Let the applicant, **Golu Patel** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicant shall not tamper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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 :- 24.11.2023
S.S.