

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43047 of 2023

Applicant :- Raju Nishad

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

Counsel for Applicant :- K.K.Rao, Pradeep Kumar Srinette

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri K.K.Rao, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I 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 Raju Nishad, seeking enlargement on bail during trial in connection with Case Crime No. 346 of 2023, under Sections 376, 313, 504, 506, 323 I.P.C., registered at Police Station Ramgarh Tal, District Gorakhpur.
4. Learned counsel for the State submits that in compliance of the order dated 27.10.2023 of this Court, personal affidavit of SSP concerned has been filed in the office on 06.11.2023. The same is not on record.
5. Office to trace out the same and place it on record and make a note in the order sheet. A photo copy of the said affidavit has been produced before the Court by learned counsel for the State. The same is on record.
6. Learned counsel for the applicant submits that he does not intend to file any response to the same. Learned counsel for the State submits that he has received instructions in the matter.
7. The FIR of the matter was lodged on 16.06.2023 against the applicant and five other persons alleging therein that her husband died six years back. The applicant is her devar and on false promise to marry with her established physical relationship. Due to the same she became pregnant for three months on which she was given medicine and aborted the said pregnancy. He then assaulted

her and threatened her. The other accused persons abused and denied marriage with the applicant.

8. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the first informant/victim is a widow lady. It is argued that as per her statement recorded under Section 161 Cr.P.C. she is HIV patient. It is argued that even the husband of the victim died because of HIV. It is argued that the implication of the applicant in the present matter is totally false and incorrect. The FIR has been lodged just in order to falsely implicate, harass and blackmail the applicant and his family members. It is argued that there is no evidence whatsoever with regards to the victim aborting the pregnancy. He further argued while placing paragraph 19 of the affidavit that the applicant has a criminal history of one case in which he has been released on bail, the order granting bail which is annexure 8 to the affidavit has been placed before the Court. He is in jail since 17.06.2023.

9. Per contra, learned counsel for the State opposed the prayer for bail.

10. After having heard learned counsels for the parties and perusing the records, it is evident that the first informant/victim is a widow lady. As per her statement recorded under Section 161 Cr.P.C. she is HIV patient. It is argued that even the husband of the victim died because of HIV. She is a major woman aged about 34 years.

11. 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.

12. Let the applicant **Raju Nishad**, 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.

13. 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.

14. The bail application is ***allowed***.

Order Date :- 7.11.2023

M. ARIF

(Samit Gopal, J.)