Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43581 of 2023

Applicant :- Rashid
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Ajay Kumar Mishra
Counsel for Opposite Party :- G.A.,Sandeep Kumar Srivastava

Hon'ble Dr. Gautam Chowdhary,J.

Heard Sri Ajay Kumar Mishra, learned counsel for the applicant, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant **Rashid,** seeking enlargement on bail during trial in connection with Case Crime No. 419 of 2023, under sections 363, 366, 376 IPC and section 3/4 POCSO Act, P.S. Didoli, District Amroha..

The submission advanced by learned counsel for the applicant is that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. The first information report of the incident has been lodged after 10 days of the incident, the incident has occurred on 16.08.2023 but the FIR has been lodged 26.08,2023. There are contradictions in the statement of the victim recorded under sections 161 and 164 Cr.P.C. According to medical examination report no mark of injury was found on the body of the victim. . The victim is major girl. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It is further contended by learned counsel for the applicant that the applicant is languishing in jail since 07.09.2023 having no criminal history.

Per contra, learned AGA for the State has opposed the prayer for bail but admitted the fact that there are contradictions in the

statement of the victim.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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.

Let the applicant- **Rashid,** be released on bail in the aforesaid case crime number on furnishing a personal bond and two **heavy** 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.

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.

The bail application is **allowed**.

Order Date :- 12.10.2023

RPD

Digitally signed by :-
RATAN PRAKASH DWIVEDI
High Court of Judicature at Allahabad