

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43345 of 2023

Applicant :- Lekhpal

Opposite Party :- State Of Up Through Princi. Secre. Home Gov. Of Up At And 3ors

Counsel for Applicant :- Dwijendra Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Sri Neeraj Kumar Sharma, learned A.G.A., on the basis of instructions submits that notice of the instant bail application has been served upon the informant- opposite party no. 2 and the Child Welfare Committee, Firozabad- opposite party no.3 on 16.11.2023. However, when the case is taken up, no one appears on behalf of the opposite party nos. 2 and 3 nor any counter affidavit has been filed on their behalf. Ms. Gunjan Sharma, Advocate, appears on behalf of the High Court Legal Services Committee- opposite party no. 4. She may upload her Vakalatnama during the course of the day.

2. Heard learned counsel for the applicant, Sri Neeraj Kumar Sharma, learned A.G.A. for the State-opposite party no. 1, and Ms. Gunjan Sharma, learned counsel for the opposite party no. 4.

3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 394 of 2023, under Sections 452, 354, 506 I.P.C. and 7/8 Protection of Children from Sexual Offences Act, Police Station Sirsaganj, District Firozabad during the pendency of the trial.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case on account of certain other disputes between the parties. The incident is alleged to have occurred on 29.06.2023 at 02.00 a.m. and the first information report was lodged at 11.32 a.m. The delay in the facts of the present case is fatal to the prosecution case. The applicant did not act inappropriately with the victim. It is next contended that there are contradictions in the first information report and the statement of the victim under Section 161 Cr.P.C. on one hand and the statement of the victim under Section 164 Cr.P.C. on the other

hand. In the first information report the informant and in the statement under Section 161 Cr.P.C. the victim, both stated that after the incident the applicant ran away from the spot, whereas in the statement under Section 164 Cr.P.C. the victim stated that the applicant was arrested at the spot. The said inconsistencies discredit the prosecution case. At this stage, there is no cogent evidence to link the applicant with the offence. The applicant is in jail since 30.06.2023 having no criminal history and if he is released 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 learned counsel for the parties and after perusal of the record, this Court prima facie finds that there are contradictions in the first information report as well as statement of the victim under Section 161 Cr.P.C. on one hand and the statement of the victim under Section 164 Cr.P.C. on the other hand. The said inconsistencies discredit the prosecution case. At present there is no substantive evidence against the applicant. The applicant has no criminal antecedents. Moreover, the applicant has remained confined for almost five months and after submission of the charge-sheet there is no hope of early conclusion of trial, 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, therefore, 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- Lekhpal, 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 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; and,
- (iii) shall not pressurize the prosecution witnesses.

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 :- 29.11.2023
SKT/-