

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43762 of 2023

Applicant :- Gulfam

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

Counsel for Applicant :- Prem Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Anil Kumar Srivastava, learned Senior Advocate, assisted by Sri Prem Narayan Singh, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. Notice was issued to the first informant vide order dated 13.10.2023. Office vide its report dated 24.11.2023 reported that notice has been served personally upon the opposite party no. 2 as per report of C.J.M. concerned dated 03.11.2023. Despite service no one appears on behalf of the first informant. Service of notice upon the first informant is sufficient.

4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Gulfam, seeking enlargement on bail during trial in connection with Case Crime No.152 of 2023, under Sections 363, 376 I.P.C. and 3/4 POCSO Act, registered at P.S. Baraut, District Baghpat.

5. The F.I.R. of the matter was lodged on 20.2.2023 under Section 363 I.P.C. by Mahrajuddin against the applicant alleging therein that his daughter was taken by the applicant on 20.2.2023. Her date of birth is 10.08.2013.

6. Learned counsel for the applicant argued that the present case is a case of consent. It is argued that the victim in her statement recorded under Section 161 Cr.P.C. states of going with the applicant and in the statement recorded under Section 164 Cr.P.C. also she states of going with the applicant but states of her being raped. It is argued that medical evidence does not corroborate with the prosecution story. It is argued that the victim herself in the statement states of the her being illiterate. It is further argued that as per the certificate of C.M.O. concerned, she has been opined to be 16-17 years in age and by giving the benefit of variations of two years she would be a major girl. It is argued while placing para-25 of the affidavit that the victim and the applicant are consenting party. It is argued that the applicant has no other criminal antecedents as stated in para-17 of the affidavit and is in jail since 25.02.2023.

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

8. After having heard learned counsels for the parties and perusing the record, it is evident that as per medical certificate of C.M.O. concerned, the victim has been opined to be 16-17 years in age and by giving the benefit of variations of two years, she would be a major girl. The medical

evidence does not corroborate with the prosecution story. The case appears to be a case of consent.

9. 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.

10. Let the applicant- Gulfam, 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.

11. 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.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 30.11.2023/Naresh