

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44344 of 2023

Applicant :- Mukeem

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

Counsel for Applicant :- Ashutosh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA submits that notice of the instant application has been served in the office of opposite party no.4 on 10.10.2023. The notice has also been served personally on opposite party no.2/informant on 7.10.2023. The receiving endorsements have been produced by learned AGA, the same are taken on record. However when the case called out no one appears on behalf of the said opposite parties nor any counter affidavit has been filed.

2. Heard learned counsel for the applicant, learned AGA for the State-opposite party 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. 290 of 2023, under Section 354-B, 323, 504, 506, 336 I.P.C. and 7/8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, Police Station- Jalesar, District- Etah during the pendency of trial.

4. Counsel for the applicant submits that prior enmity exists between the parties. The informant had earlier filed a civil suit in the court of Civil Judge (Junior Division), Jalesar, District Etah numbered as Original Suit No. 115 of 2022 (Hari Om Vs. Srinivas and others). The said suit is still pending consideration. In the alleged incident the injuries sustained by the injured persons are simple in nature. The victim in her statement under Section 164 Cr.P.C. has narrated an entirely different version. This departure has not been explained. The whole family of the applicant has been implicated falsely in the instant case. The applicant did not act inappropriately with the victim. The applicant does not have any criminal history. The applicant is in jail since 8.9.2023. In case, he is enlarged on bail, he will not misuse the said liberty.

5. Learned AGA 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 victim in her statement under Section 164 Cr.P.C. has narrated an entirely different version. In such circumstances, there is no clarity with regard to the role of the applicant. The applicant has no criminal antecedents. Further the applicant has presently remained confined for almost two 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 **Mukeem**, involved in the aforesaid case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the 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;

(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 :- 3.11.2023

S.S.