

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44204 of 2023

Applicant :- Jumman @ Ram Asrey Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Vidya Kant Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Vidya Kant Tripathi, learned counsel for the applicant and Sri Srikrishna Tiwari, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Jumman @ Ram Asrey Singh**, seeking enlargement on bail during trial in connection with Case Crime No. 166 of 2023, under Sections 376-D, 313, 504, 506, 342 I.P.C., Police Station Adalhat, District Mirzapur.

3. The first information report of the present matter was lodged by the victim herself on the basis of an application moved under section 156 (3) Cr.P.C. alleging therein that there was some discussion for marriage between her and co-accused Ram Dulare after which there was physical relationship between them. She became pregnant and was given medicines twice after which she aborted the pregnancy. When she asked for marriage, he refused and in order to teach her a lesson he called her to his house where the applicant and other accused persons were present who committed rape upon her.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim has been opined to be above 18 years of age as per radiological report and as such she is a major. Learned counsel argued that there was discussion between the co-accused Ram Dulare and the victim for marriage and they had indulged in physical relationship but since the same could not materialize, the present first information report has been lodged implicating the applicant and other persons. The applicant is the brother of Ram Dulare. It is argued that the family of Ram Dulare has been made as an accused as the applicant is his brother, co-accused Sooraj is also his brother who has been made as an accused along with Mahendra and one unknown person. It is argued that even previously the victim had lodged a first information report as Case Crime No. 107 of 2023 on 30.06.2023, under Sections 376, 506 I.P.C., Police Station Sagra, District Varanasi against one Ambuj Singh with the allegation that on the pretext of providing her employment he committed rape upon her. It is argued that the victim was in the habit of lodging false reports. It is argued that the investigation in the matter has concluded and charge-sheet has been submitted. The applicant

has no criminal history as stated in para 20 of the affidavit and is in jail since 05.08.2023.

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

6. After having heard learned counsel for the parties and perusing the record, it is evident that the applicant is the brother of co-accused Ram Dulare with whom the victim was in a love affair, there was discussion between them for marriage and physical relationship was between them but the marriage could not materialize. Even the victim became pregnant due to the said relationship which was got aborted. The applicant is the brother of Ram Dulare.

7. 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.

8. Let the applicant- **Jumman @ Ram Asrey Singh**, 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.

9. 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.

10. The bail application is **allowed**.

Order Date :- 17.10.2023
AS Rathore

(Samit Gopal,J.)