

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43931 of 2023

Applicant :- Nadeem And Another

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

Counsel for Applicant :- Akash Tomar

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Ms. Surabhi, Advocate has filed her Vakalatnama on behalf of the informant. The same is taken on record.

2. Heard learned counsel for the applicants, Ms. Surabhi, learned counsel for the informant and learned AGA for the State-respondent.

3. The instant bail application under Section 439 Cr.P.C. has been filed with a prayer to enlarge the applicants on bail in Case Crime No. 456 of 2023, under Sections 363, 504 IPC and Section 7/8 POCSO Act, Police Station Chandpur, District Bijnor, during the pendency of trial.

4. Counsel for the applicants submits that the applicants have been falsely implicated in the present case. The incident is alleged to have occurred on 05.07.2023 and 07.07.2023. However, the first information report was lodged on 14.07.2023. The delay in the facts of the present case is fatal to the prosecution case. The applicants did not act inappropriately with the victim. The medical examination of the victim was conducted on 15.07.2023. In the medical report, no external injury was seen. In the statement of the victim under Section 161 Cr.P.C. the date of alleged incident was not disclosed, whereas in his statement under Section 164 Cr.P.C, the date of incident was alleged as 08.07.2023. It is contended that contradictions in the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. discredits the prosecution case. The applicants had not abducted the victim nor did they acted inappropriately with him. The applicants are in jail since 20.09.2023 having no criminal history and in case they are enlarged on bail, they will not misuse the said liberty.

5. Learned counsel for the informant submits that due to misunderstanding between the parties, the instant FIR has been lodged against the applicants. She further submits that, she has no

objection, if the applicant is enlarged on bail.

6. Learned AGA has opposed the prayer for bail.

7. Having heard counsel for the parties and having perused the record, this Court prima facie finds that there are inconsistencies in the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. The medical report does not support the prosecution case. At this stage there is no substantive evidence against the applicants. The applicants have no criminal antecedents. Further, the applicants have remained confined for almost two months and after submission of the charge-sheet 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 applicants, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

8. Let the applicants **Nadeem and Farmaan**, involved in the aforesaid case be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that they:

(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.

9. 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 :- 16.10.2023

Lbm/-