

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44222 of 2023

Applicant :- Akash

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

Counsel for Applicant :- Amit Kumar Malviya, Brij Bhushan Upadhyay, Rishi Kesh Malviya

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. As per office report dated 07.11.2023, notice of the instant application has been served on the opposite parties no. 2-informant and opposite no. 4- Child Welfare Committee. However, when the case is taken up no one appears on their behalf nor any counter affidavit has been filed.

2. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, 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 applicant on bail in Case Crime No. 643 of 2017, under Sections 354, 323, 504, 506 IPC and Section 7/8 POCSO Act, Police Station Javan, District Aligarh, during the pendency of trial.

4. Counsel for the applicant submits that the applicant has been falsely implicated in the present case. The victim is a major girl. A vague and general role has been assigned to the applicant. Identically placed co-accused Rajendra Kumar and Bharat have been granted bail by this Court in Criminal Misc. Bail Application No. 20937 of 2023 and 39750 of 2023 vide orders dated 12.07.2023 and 22.09.2023. The applicant claims parity. The applicant is in jail since 16.08.2023 having no criminal history and 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 identically placed co-accused Rajendra Kumar and Bharat have been granted bail by this Court. At present there is no substantive evidence against the applicant. The applicant has no criminal antecedents. The applicant has remained confined for more than three 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 applicant, 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 applicant is entitled to be enlarged on bail.

7. Let the applicant **Akash**, 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 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; 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 :- 17.11.2023

Lbm/-