

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44161 of 2023

Applicant :- Yogendra Kumar Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudarshan Singh, Atharva Dixit, Sr. Advocate

Counsel for Opposite Party :- G.A., Prateek Kumar

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Sudarshan Singh, learned counsel for the applicant, Sri Prateek Kumar, learned counsel for the first informant and Sri Gaurav Singh, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Yogendra Kumar Mishra, seeking enlargement on bail during trial in connection with Case Crime No. 690 of 2023, under Sections 328, 376, 392, 506, 411 I.P.C., registered at Police Station Kavi Nagar, District Ghaziabad.

4. Learned counsel for the State submits that he has received instructions for which he had sought time previously on 17.10.2023.

5. The FIR of the matter was lodged by the victim herself on 07.08.2023 against the applicant alleging therein that her husband Anupam Parasari died on 17.11.2022 after which the applicant along with his wife met who were the resident of her village visited her house in Prayagraj and showed sympathy and then often used to visit her house. She never opposed it. On 29.01.2023 the applicant came to her house in Ghaziabad wherein she offered cold drink which she brought in two glasses and in the meantime he mixed some intoxicating medicine in one of the glasses of cold drink and after consuming it she became intoxicated and then the applicant committed rape upon her and made a video. On 29.01.2023 she became conscious wherein he showed her video and again pressed her for physical relationship. He then used to call her to different hotels on the pretext of deleting the said video and established physical relationship. He also made purchases which were paid by her.

6. Learned counsel for the applicant argued that the applicant has

been falsely implicated in the present case. It is argued that the victim is a widow lady. In her statement recorded under Section 161 Cr.P.C. she although states of the applicant capturing objectionable video but does state clearly regarding any sexual assault. It is argued that in the statement recorded under Section 164 Cr.P.C. she then changes the version of the case as stated by her in the FIR and in the statement under Section 161 Cr.P.C. but states of the applicant committing rape upon her and capturing video. She remains silent for about seven months from the first act of rape. It is argued that during investigation no such alleged video was found by the Investigating Officer. Para 17 of the affidavit has been placed before the Court. It is argued that charge sheet in the matter has been submitted against the applicant and as such there are no chances of the applicant tampering with evidence. He further argued that the applicant has no criminal history as stated in para 24 of the affidavit and is in jail since 13.08.2023.

7. Learned counsel for the first informant opposed the prayer for bail and argued that the applicant cheated the victim and mixed some intoxicating substance in the cold drink and raped her and prepared a video after which he blackmailed her and continue raped her in various hotels after calling her on the pretext of the said video to delete it. He conceded that no such alleged video has been recovered by the Investigating Officer. Learned counsel for the State also opposed the prayer for bail and adopted the arguments of learned counsel for the first informant.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the FIR has been lodged after about seven months of the alleged incident of first rape. The victim/first informant is a widow lady. No such video which is alleged to have been recorded by the applicant on the basis of which he blackmailed her for quite a long time and committed rape many times on her in different hotels, has been recovered during investigation.

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 **Yogendra Kumar Mishra** 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***.

Order Date :- 1.11.2023

M. ARIF

(Smit Gopal, J.)