Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44697 of 2023

Applicant :- Harendra
Opposite Party :- State of U.P.
Counsel for Applicant :- Vijendra Kumar Mishra,Pravesh Kumar Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Sri Vijendra Kumar Mishra, learned counsel for the applicant and Sri Birendra Pratap Singh, 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- **Harendra**, seeking enlargement on bail during trial in connection with Case Crime No. 395 of 2023, under Sections 376, 406 & 506 I.P.C., Police Station Bansgaon, District Gorakhpur.

3. Learned counsel for the applicant argued that although the applicant is named in the first information report which has been lodged by the victim herself but the victim states therein that she is aged about 37 years and is a widow. Her husband has died 06 years back. It is argued that there was some discussion between the parties with regard to marriage which is stated by the victim herself in the first information report but the same could not materialize and since there was physical relationship between them, the present first information report has been lodged. It is argued that the implication of the applicant in the present case is with *malafide* intention. It is argued that the charge-sheet in the matter has been submitted and as such there are no chances of the applicant tampering with the evidence or threatening the witnesses. The applicant has no criminal history as stated in para 21 of the affidavit and is in jail since 22.09.2023.

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

5. 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.

6. Let the applicant- **Harendra**, 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.

7. 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.

8. The bail application is **allowed**.

Order Date :- 19.10.2023
AS Rathore

(Samit Gopal,J.)

Digitally signed by :-
ABHISHEK SINGH RATHOR
High Court of Judicature at Allahabad