

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45041 of 2023

Applicant :- Kala @ Janki

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohammad Zakir

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the case due to enmity and village rivalry. Learned counsel for the applicant further submits that the FIR of the present case was lodged against applicant and two others on 10.07.2023 and according to the FIR, on 06.07.2023 when informant was going on the motorcycle of co-accused Pawan, her distant brother-in-law (bahnoi) then on the way applicant and co-accused Tota Ram met and thereafter applicant, co-accused Tota Ram and distant relative Pawan committed rape with her.

3. Learned counsel for the applicant further submits that entire story narrated by the victim in the FIR as well as in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be totally false and no reliance can be placed on such version. He further submits that although, as per the allegation, three person committed rape with the victim but in spite of that doctor did not find any injury on her body. He further submits that although, as per the allegation, rape was committed on 06.07.2023 but FIR of the present case was lodged on 10.07.2023 i.e. after four days. Learned counsel for the applicant further submits that the co-accused, Tota Ram, against whom the victim has made same allegation of rape as against the applicant, has already been granted bail by a coordinate Bench of this Court vide order dated 18.10.2023 passed in Criminal Misc. Bail Application No. 44379 of 2023. The role assigned to the applicant is similar to that of the co-accused, Tota Ram, who has already been enlarged on bail. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed

before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 17.07.2023, having no criminal history.

4. Per contra, learned A.G.A. opposed the prayer for bail and submitted that it is a case of gang rape and informant in the FIR as well as in her both the statements recorded during investigation made allegation of rape against applicant, co-accused Pawan and Tota Ram, but could not dispute the fact that informant is major and married lady and story narrated by her appears to be quite improbable and during her medical examination, doctor did not find any injury on her body.

5. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

6. Let applicant-**Kala @ Janki**, involved in Case Crime No. 188 of 2023, under Sections 376-D, 506 I.P.C., P.S. Chandaus, District Aligarh, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(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.

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 in accordance with law.

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

Order Date :- 27.10.2023

Mustaqeem.