

Neutral Citation No. - 2023:AHC:202482

Reserved On:- 09.10.2023

Delivered On:- 18.10.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 54292 of 2022

Applicant :- Bhupendra Tiwari

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Kumar Dixit, Shri Raghavendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

1. Heard Sri Amit Kumar Dixit, learned counsel for the applicant and Sri G.N. Kanaujia, learned AGA for the State and perused the material placed on record.
2. The instant bail application has been filed on behalf of the applicant, Bhupendra Tiwari, with a prayer to release him on bail in **Case Crime No. 54 of 2022, under Sections 376, 328, 323, 504, 506, 509, 341, 452 IPC and Section 67-A of I.T., Act, Police Station- Mataundh, District- Banda**, during pendency of trial.
3. There is allegation in FIR that daughter of informant aged about 21 years was alone in the house. On 05.04.2022, at about 1:00 pm the applicant and co-accused, Arvind Tiwari, gave her intoxicating cold drink to consume and made her obscene video regarding commission of offence of rape. She was threatened from disclosing to any one regarding the commission of alleged offence. The victim informed the informant that earlier also applicant had committed such offence against her and had threatened her of murder of her father and brothers, in case she discloses it to anyone. Applicant had made her obscene photograph viral from his facebook I.D. and used to threaten her of making aforesaid video viral and applicant and co-accused used to commit the alleged offence of rape against her. On 10.04.2022, when the informant side went to house of the applicant to complain, they were abused, beaten and fired upon with intention to kill. When he went to the police station, he was pressurized and FIR was not promptly lodged.
4. Learned counsel for the applicant has submitted that entire allegations made in the FIR are false. He has submitted that no such incriminating video or any incriminating photograph were recovered by the Investigating Officer. He has submitted that informant wanted to solemnize marriage of the victim with applicant and when applicant did

not agree to the proposal, FIR was lodged. After investigation co-accused, Aryan Tiwari, Vivek Diwedi and Lal Tiwari, have been exonerated by the investigating officer. He has submitted that the first incident took place at 1:00 pm in the afternoon, but no alarm was raised by the victim and she consumed the alleged cold drink without any protest. He has submitted that it is a case of false implication of the applicant. He has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 25.04.2022. The trial in the aforesaid case is not likely to be concluded in near future.

5. Learned A.G.A. has opposed the prayer for bail of the applicant and has submitted that the allegations against the applicant are quite serious and the applicant does not deserves to be enlarged on bail.

6. This court vide order dated 24.02.2023, directed the Superintendent of Police, Banda, to file his personal affidavit disclosing whether there is any indecent videos of the victim have been recovered or not. A personal affidavit has been filed by Superintendent of Police, Banda, stating that the brother of the victim namely, Ramakant Diwedi, has provided screenshot of indecent videos of his sister/victim going viral on facebook. The same has been incorporated in C.D. No. 24. It has further been averred in the personal affidavit that brother of victim had provided indecent video to the investigating officer which is clear from his statement incorporated in C.D. No. 8 annexed by way of Annexure-1 to the personal affidavit which is part of the case diary, but C.D. No. 8 had not been mentioned therein. Rather it is the statement of brother of the victim, Ramakant Diwedi, wherein he has informed the investigating officer that he has got the objectionable screenshot and video, but video has been deleted and he will provide the screenshot later. Therefore, it is clear that there is no screenshot or video found by the investigating officer and personal affidavit has been filed without bringing on record any indecent video/photograph of the victim allegedly made viral by the applicant. This court has gone through the case diary produced by learned AGA, which also does not contains any such video or photograph of the victim.

7. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of **Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022** and considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime 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 with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

9. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

10. The court below is directed to conclude the trial against the applicant, as expeditiously as possible, preferably within a period of one year.

11. **Registrar(Compliance) is directed to communicate this order to the concerned court below within ten days.**

Order Date :- 18.10.2023

Abhishek