

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44412 of 2023

Applicant :- Dr. Farooque

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Mishra, Amit Daga

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Sri Surendra Narayan Mishra, learned counsel has filed his power on behalf of the informant today in the Court, which is taken on record. Heard learned counsel for the applicant, learned A.G.A for the State, learned counsel for the informant and perused the record.

2. Learned counsel for the applicant submits that the allegation against the applicant is that some money was due to be paid with regard to the sale of land and on the pretext of paying the same, she went to the fixed place, as asked by the co-accused Raj Kumar @ Bobby, where the applicant and the co-accused Raj Kumar @ Bobby caught hold her and dragged her in a room and had committed rape with her. Learned counsel further argued that the incident is alleged to have taken place on 17.07.2023 whereas, the F.I.R. has been lodged on 05.09.2023 without there being any plausible explanation of such an inordinate delay. He further submits that the victim in her statement recorded under Section 161 Cr.P.C. has levelled allegation of scolding and abusing against the applicant at the time when the co-accused Ram Kumar @ Bobby was committing rape with her. Learned counsel also drawn attention of this Court to the question-answer no.1 put by the Investigating Officer, who asked the victim as to why earlier complaint was not made since the incident took place one and half

months before, in reply to the same, the victim had stated that talks of compromise was going and when no compromise took place, the instant prosecution has been launched, which itself demonstrate the malafides of the victim. Apart from the aforesaid, learned counsel has also drawn attention of this Court to Annexure-5 to the affidavit accompanying the bail application, which is the statement of the victim recorded under Section 164 Cr.P.C. wherein, she has also levelled allegation of rape against the applicant at the hospital of the applicant, which cannot be believed by a man of ordinary prudence in view of the fact, that the applicant would call the victim, who is aged about 45 years, at his hospital where number of persons are present and would commit such heinous offence. Learned counsel further argued that the due amount of the land as has been narrated in the F.I.R. by the victim, though the said belongs to the informant's husband namely, Mohd. Ashkar, who is having 1/4th share of agricultural land, who entered into agreement to sell with the applicant and one Mohd. Sheob for a sale consideration of Rs. 22 lacs out of which Rs. one lacs was paid as earnest money, thereafter, the informant's husband was again paid Rs. 10 lacs but he did not execute the sale deed and when the applicant made repeated request, he got registered a complaint against the applicant on IGRS Portal in which after enquiry it was found that inspite of receiving the earnest money, said Mohd. Ashkar did not execute the sale deed and both the parties are making complaints against each other. Learned counsel further argued that Mohd. Ashkar, the husband of the informant had executed sale deed in favour of one Smt. Zahida, who thereafter applied for mutation and her name was recorded in the revenue record against which the informant, moved recall application, which was rejected, which has been reduced in writing

in Parcha C.D.4 dated 10.09.2023. Learned counsel further argued that the victim only to extract money from the applicant has implicated him in the present case. 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 08.09.2022 having no criminal history.

3. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

4. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is allowed.

5. Let applicant **Dr. Farooque** involved in Case Crime No.262 of 2023 under Sections 376(D), 323, 504, 506 I.P.C., Police Station Mainather, District Moradabad, be released 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 shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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.

II. The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the 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 of the Indian Penal Code.

IV. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

Order Date :- 18.10.2023

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