

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44727 of 2023

Applicant :- Sarvez

Opposite Party :- State of U.P.

Counsel for Applicant :- Ch. Dil Nisar, Ankit Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Supplementary affidavit filed by the learned counsel for the applicant is taken on record.

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

3. It has been argued by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that initially F.I.R. was lodged under Section 366 I.P.C. against four persons including the applicant. He further submits that on 21.01.2019 the statement of the victim under Section 161 Cr.P.C. was recorded in which she made allegations against all the accused persons including the applicant for forcibly taking her away from her house and committing rape upon her at their house. She also stated in her statement that accused persons committed her rape several times. Learned counsel for the applicant further submits that on 22.01.2019 the statement of the victim under Section 164 Cr.P.C. was also recorded in which she has stated that all the named accused persons forcibly taken her away from her house by pressing her mouth on showing country made pistol and taken her to the house of Islam, where, the applicant and two other accused persons namely, Sufiyan and Farid committed her rape. Thus, there is material contradiction in the statement of the victim recorded under Sections 161 & 164 Cr.P.C.

4. Learned counsel has next argued that in the medical examination of the victim, no injury either external or internal seen on the person of the victim, her hymen was found old torn and healed. It is thus contended that medical report also does not corroborate with the prosecution version. Learned counsel for the applicant further submits that he has explained criminal history of

the applicant in the supplementary affidavit filed today, and in all cases he has 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 20.01.2019.

5. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage and he is having criminal history of several cases, 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.

6. 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, this Court is of the view that the applicant may be enlarged on bail.

7. Let applicant- **Sarvez**, involved in Case Crime No. 21 of 2019, under Sections 366, 376-D, 364, 370, 120-B I.P.C., Police Station Maniharan, District Saharanpur, 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.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

8. 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.

9. The bail application is **allowed**.

Order Date :- 19.10.2023
Mustaqeem.