

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44815 of 2023

Applicant :- Raja

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudhakar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Sudhakar Shukla, learned counsel for the applicant, Sri Birendra Pratap Singh, learned AGA for the State and perused the material on record.
3. Learned A.G.A. states that he has received instructions in the matter for which he was granted time on 26.10.2023.
4. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Raja, seeking enlargement on bail during trial in connection with Case Crime No. 60 of 2023, under Sections 376, 506 I.P.C. registered at P.S. Anvarganj, District Kanpur Nagar.
5. The F.I.R. of the matter was lodged on 07.07.2023 by the victim herself against the applicant with the allegations that her husband died four years back. The applicant was friend of her husband and used to visit her house. In the meantime he established physical relationship with her without her consent and recorded video of it and by showing the said video again and again, he committed rape on her and extracted money by blackmailing her. On 06.7.2023 he again came to her shop and showed the video and demanded money and on refusal, he threatened her of causing disrepute.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the relationship between the applicant and the victim was consensual relationship, after which some misunderstanding arose between them and then the present F.I.R. has been lodged. It is argued that the victim is 40 years old widow lady and the F.I.R. has been lodged after an unexplained delay from the date of first act of rape. It is argued that no such alleged video has been recovered by the Investigating Officer during investigation

as the applicant is not charged for any offence under the Information Technology Act. Para-18 of the affidavit has been placed before the Court to buttress the said argument. It is argued that the applicant has no other criminal antecedents as stated in para-27 of the affidavit and is in jail since 8.7.2023.

7. Per contra, learned State counsel opposed the prayer for bail but could not dispute the arguments as aforesaid.

8. After having heard learned counsels for the parties and perusing the record, it is evident that the victim is a major widow lady. The relationship between the victim and the applicant was for the last four years. The F.I.R. has been lodged after some dispute arose between them. The delay of making a complaint regarding allegation of rape is not explained. There is no recovery of any such incriminating video during investigation.

9. 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.

10. Let the applicant- Raja, 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.

11. 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.

12. The bail application is allowed.

(Samit Gopal,J.)

Order Date :- 6.11.2023

Naresh