

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44782 of 2023

Applicant :- Qasim

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mumtaz Ali, Shubham Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma, J.

1. Learned A.G.A. submits that notice of the instant application has been served on the informant, opposite party No. 4 and Child Welfare Committee, Bulandshahr, opposite party No. 3 on 16.10.2023 and 19.10.2023, respectively. However, when the case is taken up, no one appears on their behalf, nor any counter affidavit has been filed. Receiving endorsements produced by learned A.G.A. are taken on record.

3. Heard learned counsel for the applicant and learned A.G.A. for the State-respondents.

4. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 485 of 2023, under Sections 354, 386, 506 I.P.C. and Section 7/8 POCSO Act, P.S.- Kotwali Nagar, District- Bulandshahr, during pendency of the trial.

5. Learned counsel for the applicant submits that the victim was in relationship with the co-accused Murtaza since 09.12.2020. In the statement of the victim under Section 164 Cr.P.C., allegations of rape and making the obscene video has been levelled against the co-accused Murtaza. The Investigating Officer has not collected any video clip from the mobile phone of the applicant nor there is any report by the cyber cell that the applicant has made the video viral. The applicant had not threatened the victim of making her obscene video viral. The applicant being the friend of co-accused Murtaza, has been falsely implicated in the instant case. The applicant has not acted inappropriately with the victim. The case of the applicant is clearly distinguishable from that of co-accused Murtaza. The applicant is in jail since 07.06.2023 having no criminal history and in case he is enlarged on bail, he will not misuse the said liberty.

6. Learned AGA has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

7. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the victim in her statement under Section 164 Cr.P.C. has made allegations of rape and making obscene video against the co-accused Murtaza. Further the applicant has no criminal antecedents. The applicant has remained confined for more than four months and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicant, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

8. Let the applicant **Qasim** involved in the aforesaid case 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 subject to the conditions that he:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 26.10.2023

Nitika Sri.