

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45178 of 2023

Applicant :- Neeraj @ Neeru

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

Counsel for Applicant :- Kashi Naresh Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA submits that notice of the instant application has been served on the opposite party no.3-Child Welfare Committee and opposite party no.4-informant on 05.10.2023. 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 AGA, are taken on record.

2. Heard learned counsel for the applicant and learned AGA for the State-respondent.

3. 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. 240 of 2023, under Sections 323, 354, 354-B, 506 IPC and Section 7/8 POCSO Act, Police Station Gaunda, District Aligarh, during the pendency of trial.

4. Counsel for the applicant submits that the applicant was not arrested at the spot and has been falsely implicated in the present case. The applicant did not act inappropriately with the victim. There are inconsistencies in the FIR, in the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. As per the FIR, the incident is alleged to have occurred on 30.07.2023 at 6:00 p.m. In the statement of the victim under Section 161 Cr.P.C. the time was not mentioned, whereas the victim in her statement under Section 164 Cr.P.C. stated that the incident is alleged to have occurred on 30.07.2023 at 4:30 p.m. Further, upon the victim going into the custody of her parents, material changes have been made in her statement under Section 164 Cr.P.C. to aggravate the offence and save the failing prosecution case. The aforesaid contradictions discredit the prosecution case. In the medical report, no external injury was seen. The medical report does not support the prosecution version. The victim is a major girl. At present there is no substantive evidence that the victim is minor. The applicant is in jail since 07.08.2023 having no criminal history and in case he

is enlarged on bail, he will not misuse the said liberty.

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

6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that there are inconsistencies in the FIR, in the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. In the medical report, no external injury was seen. The medical report does not support the prosecution version. The applicant has no criminal antecedents. Further, the applicant has remained confined for more than two months and after submission of the charge-sheet 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.

7. Let the applicant **Neeraj @ Neeru**, 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.

8. 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 :- 27.10.2023

Lbm/-