

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45773 of 2023

Applicant :- Shatrughan

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

Counsel for Applicant :- G.S. Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Copy of statement of the victim produced by learned A.G.A. is taken on record.
2. Learned A.G.A. on the basis of instructions submits that notice of the instant bail application has been served upon the opposite party no. 2- informant on 25.10.2023 as well as upon the opposite party no. 4- Child Welfare Committee, Jhansi on 27.10.2023. The receiving endorsements as produced by the learned A.G.A. are taken on record. However, when the case is taken up, no one appears on behalf of the opposite party nos. 2 and 4 nor any counter affidavit has been filed on their behalf.
3. Heard learned counsel for the applicant and Sri Neeraj Kumar Sharma, learned A.G.A. for the State-opposite party.
4. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicant on bail in Case Crime No. 75 of 2023, under Sections 377 I.P.C. and 5M/6 Protection of Children from Sexual Offences Act, Police Station Poonchh, District Jhansi during the pendency of the trial.
5. Learned counsel for the applicant submits that the applicant has been falsely implicated in the instant case owing to certain other disputes between the parties. The incident is alleged to have occurred on 29.04.2023 at 07.30 P.M. and the first information report was lodged on 30.04.2023 at 11.47 P.M. There is no explanation for the inordinate delay in lodging the first information report. The applicant did not act inappropriately with the victim. As per the medical report, no abnormality was detected at the time of external and internal examination of the victim. As per the case diary, the victim was medically examined on 01.05.2023. There are inconsistencies in the statements of the victim under Sections 161 and 164 Cr.P.C. In the statement of the victim under Section 164 Cr.P.C. the victim stated that at the time of incident four

persons came and the video was recorded. The said inconsistencies discredit the prosecution case. It is contended that no such video of the incident was recovered by the Investigating Officer. The applicant is in jail since 01.05.2023 having no criminal history and if he is released on bail, he will not misuse the said liberty.

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

7. Having heard learned counsel for the parties and after perusal of the record, this Court prima facie finds that the first information report was lodged belatedly. The medical report does not support the prosecution version. There are inconsistencies in the statements of the victim under Sections 161 and 164 Cr.P.C. The applicant has no criminal antecedents. Moreover, the applicant has remained confined for almost six months and after submission of the charge-sheet there is no hope of early conclusion of trial, and 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, therefore, 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- Shatrughan, 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 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; and,
- (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 :- 9.11.2023
SKT/-