

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45925 of 2023

Applicant :- Sanju

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

Counsel for Applicant :- Anil Kumar Bind, Bhagwan Das Bind

Counsel for Opposite Party :- G.A., Rajeev Kumar Singh Parmar

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard learned counsel for the applicant, learned A.G.A for the State as well as Shri Rajeev Kumar Singh Parmar, learned counsel for the complainant and perused the record.

2. It has been argued by learned counsel for the applicant that initially F.I.R. dated 08.06.2023 was lodged by the complainant against the applicant and two other accused persons, who are his father and mother, under Sections 363, 366 I.P.C. with the allegation that they were used to call her minor daughter aged about 13 years and 11 months and were trying to pacify her to solemnize her marriage with the applicant from the last two months, on 03.06.2023 at about 1:00 p.m. the accused persons enticed his minor daughter and at the time of leaving her house the daughter of complainant took away with her twenty thousand rupees along with some golden ornaments. Learned counsel for the applicant further submits that when the victim was recovered her statement under Section 161 Cr.P.C. was recorded wherein she made allegation against the applicant that on the date of incident sister of applicant, namely, Gauri came to her house at 7:00 p.m. when he was cooking food and administered some intoxicated tablets and at about 1:00 or 2:00 hours at night the applicant came there and took twenty thousand rupees and golden ornaments from the box and threatened her if she make noise he will kill her and thereafter took her with him Farrukhabad Bus Stand, thereafter to Kasganj and kept her in a house where he used to commit her rape forcibly everyday. Learned counsel for the applicant further submits that in her statement recorded under Section 164 Cr.P.C. the victim has repeated the same version of her statement recorded under Section 164 Cr.P.C. Learned counsel for the applicant further submits that statements of complainant and his wife were also recorded by the Investigating Officer wherein they have repeated the version of the F.I.R. Learned counsel for the applicant

further submits that medical report of the victim does not corroborate with the statements of the victim recorded under Sections 161 and 164 Cr.P.C., wherein doctor has opined that her hymen was found old torn and healed, no external or internal injury was seen either on the private parts of the victim or on her entire body, no definite opinion can be given about recent sexual intercourse, however, final report is pending following availability of DNA/ FSL report. Learned counsel for the applicant further submits that till date no DNA/ FSL report is on the record, which fact has not been denied by the learned A.G.A. He thus submits that no offence against the applicant is made out. Learned counsel for the applicant further submits that during the course of investigation the Investigating Officer collected school leaving certificate of the victim from the complainant, in which her date of birth is mentioned as 01.05.2009, thus, the victim is a major girl. Learned counsel for the applicant further submits that victim stayed with the applicant for about 17 days and in that period no alarm was ever raised by her, which shows that victim is a consenting party. 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 26.06.2023, having no criminal history.

3. Per contra, learned A.G.A. as well as learned counsel for the informant have opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. 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, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Sanju**, involved in Case Crime No. 116 of 2023, under Sections 363, 366, 376, 506 I.P.C. and Section 3/4 of Protection of Children From Sexual Offences Act, Police Station

Kampil, District Farrukhabad, 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.

6. 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 in accordance with law.

7. The bail application is **allowed**.

Order Date :- 31.10.2023

Mustaqeem./ S.Ali