

**Court No. - 69**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 46129 of 2023

**Applicant :-** Aman Sahani

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** K.K.Rao,Piyush Pandey

**Counsel for Opposite Party :-** G.A.,Manan Kumar Choubey

**Hon'ble Samit Gopal,J.**

1. List revised.

2. Heard Sri K.K. Rao, learned counsel for the applicant, Sri Manan Kumar Choubey, learned counsel for the first informant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Aman Sahani, seeking enlargement on bail during trial in connection with Case Crime/F.I.R. No. 340 of 2023, State of U.P. vs. Aman Sahani), under Sections 147, 452, 376, 323, 504, 506 I.P.C. registered at P.S. Gorakhnath, District Gorakhpur.

4. The F.I.R. of the matter was lodged on 30.5.2023 by the victim herself against the applicant and 04 other accused persons being his family members, alleging therein that on 30.4.2023 at about 02:30 p.m. the applicant finding her alone in the house, entered in it and committed rape upon her on which she raised a hue and cry. On hearing shouts, family members of both sides came there and on the insistence of family members of the accused of getting both married, she was taken to Gorakhnath temple on 02.5.2023 and for shielding the incident of rape a false marriage was done, after which the family members of the applicant assaulted her and her family members.

5. Learned counsel for the applicant submits that the applicant has not married the victim for which he had sought time previously on 07.11.2023 to seek instructions. It is argued that the applicant has been falsely implicated in the present case. It is argued that the victim, as per prosecution case itself, is major aged about 21 years. It is further argued that medical examination report does not corroborate with the incident of rape. It is argued that although the incident in the present matter is said to be of 30.4.2023 but the F.I.R. has been lodged after a month i.e. 30.5.2023 for which there is no plausible explanation given. It is argued that delay in lodging of the F.I.R. is a very relevant fact of a case which would go to show that there had been an afterthought and consultation prior to lodging of the F.I.R. It is argued that charge sheet in the matter has been submitted and as such there are no chances of the applicant tempering with the evidence or not co-operating in the investigation, para-18 and annexure no. 10 to the affidavit have been placed for the same. It is argued that the applicant has no other criminal antecedents as stated in para- 35 of the affidavit and is in jail since 13.7.2023.

6. Per contra, learned State counsel and learned counsel for the first informant vehemently opposed the prayer for bail and argued that the

applicant is named in the F.I.R. the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. and there is allegation against him of committing rape upon the victim. It is argued that in so far as the delay in lodging of the F.I.R. is concerned, the victim and her family members were prevented from going to the police station and lodging of an F.I.R. and it was only later on, she with her family members went to the police station and lodged the F.I.R.

7. After having heard learned counsels for the parties and perusing the record, it is evident that the applicant is major girl aged about 21 years as per the prosecution case itself. Medical examination report does not corroborate with the incident of rape. There has been inordinate delay in lodging of F.I.R. for which there is no plausible explanation given from the side of the prosecution. Charge sheet in the matter has been submitted against the applicant and other accused persons.

8. 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.

9. Let the applicant- Aman Sahani, 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.

10. 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.

11. The bail application is allowed.

(Samit Gopal,J.)

**Order Date :- 7.12.2023**  
Naresh