

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46377 of 2023

Applicant :- Sahil

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

Counsel for Applicant :- Karuna Nand Tiwari

Counsel for Opposite Party :- G.A.,Ajay Kumar Pal

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Karuna Nand Tiwari, learned counsel for the applicant, Sri Ajay Kumar Pal, learned counsel for the first informant and Sri Ram Prakash Shukla, learned counsel for the State and perused the record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant Sahil, seeking enlargement on bail during trial in connection with Case Crime No. 285 of 2023, under Sections 452, 376 I.P.C. and Section 3/4 POCSO Act, registered at Police Station Nautanwa, District Maharajganj.
4. The prosecution case as per the FIR lodged on 10.09.2023 by Harishchandra against the applicant is that his daughter had gone to the field for plucking vegetables wherein the applicant came there and enraged her modesty. His daughter shouted on which persons from nearby collected together. The incident is of 09.09.2023 at 02:00 pm. The FIR has thus been lodged under Section 354 IPC.
5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim in her statement recorded under Section 161 Cr.P.C. for the first time states that the applicant came to her house where she was standing outside and then he pulled her inside and closed the door and committed rape upon her. Her sister Pooja was only present in the house. He then left her and ran away. It is argued that subsequently the victim in her statement recorded under Section 164 Cr.P.C. reiterates the version given by her in the statement under Section 161 Cr.P.C. It is argued that the allegations of rape

are totally false, concocted and afterthought inasmuch the same are missing in the FIR despite the fact that it was mentioned therein that on the shouts of the daughter of the informant, people of nearby had collected. It is argued that the same has surfaced after consultation. It is argued that the medical examination report does not support the prosecution case as the doctor has opined that there is no mark of any injury on the body of the victim. He further argued that the applicant has no criminal history as stated in para 19 of the affidavit and is in jail since 12.09.2023.

6. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for bail and argued that the victim as per her statement recorded under Section 164 Cr.P.C. is studying in class 8th and is aged about 15 years and a minor girl. It is argued that the applicant is named in the FIR, statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. and the victim has stated of rape being committed by him on her.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the FIR has been lodged under Section 354 IPC. The factum of rape on the victim is missing in the FIR. Subsequently, the victim in her statements during investigation introduces the factum of her being raped by the applicant.

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 **Sahil**, 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***.

Order Date :- 20.11.2023

M. ARIF

(Samit Gopal, J.)