

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46383 of 2023

Applicant :- Raj Kumar

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

Counsel for Applicant :- Manju Verma, Poonam Verma, R.L. Varma

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Ms. Manju Verma, the learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. It has been argued by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that initially F.I.R. dated 03.05.2023 was lodged by the complainant who is mother of the victim, alleging therein that she along with her minor daughter aged about 16 years was working in Delhi, two months ago she along with her daughter came to her house, where she fallen ill, on 08.03.2023 on good faith she sent her daughter along with her neighbourer namely, Meena to Delhi, on 26.04.2023 when Meena and her daughter were coming to the house, then Meena sent her daughter with Rajeev @ Chhotu for solemnizing marriage and thereafter Meena came to her house and told herself that Rajeev @ Chhotu took her daughter to the house of his sister. Learned counsel for the applicant further submits that in her statement recorded under Section 161 Cr.P.C. the victim has stated that she is aged about 15 years, she studied upto Class-Vth, she went with her Bua to Panipat, where her Bua left her, then Rajeev took her with him to Mumbai, where Rajeev took a room on rent and they lived together and Rajeev made physical relations with her. Learned counsel for the applicant further submits that the victim in her statement recorded under Section 164 Cr.P.C. has stated that Meena took her three months prior, her mother sent her with Meena for work in Delhi, but Meena took her to Panipat, where two boys Rajeev and Rajkunwar came, who are brothers, where they all lived together for 4-5 days, Meena provided her a job and went away, then Rajeev and Rajkunwar told her that Meena had sold her to them, after ten days Rajeev and Rajkunwar took her to Mumbai and Rajeev told her to marry with her but she refused,

thereafter, Rajeev committed wrong with her, thereafter in absence of Rajeev, Rajkunwar also committed wrong with her of which she told to Rajeev, thereafter, he did not commit wrong with her, Rajeev used to do wrong with her daily. Learned counsel for the applicant further submits that in medical examination of the victim no sign of use of force was found, spermatozoa was not seen, her pregnancy test became positive, she was found to be six weeks and three days pregnant and her age was found to be 17 years. Learned counsel for the applicant further submits that there is contradiction in the statement of victim recorded under Section 161 & 164 Cr.P.C., she has not made any allegation against the applicant in her statement recorded under Section 161 Cr.P.C., whereas, in her statement recorded under Section 164 Cr.P.C. she made allegation against the applicant that he committed wrong with her, thus, victim has developed prosecution story in her statement recorded under Section 164 Cr.P.C. and made allegation against the applicant on the pressure exerted by her family members and the police, thus, applicant has falsely been implicated in the case with malicious intention. 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 13.07.2023, having no criminal history.

3. Per contra, learned A.G.A. has 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-**Raj Kumar**, involved in Case Crime No. 222 of 2023, under Sections 363, 366, 376DA, 342 I.P.C. and Section 5j(ii)/6, 5g/6 of Protection of Children From Sexual Offences Act,

Police Station Sehramau Dakshini, District Shahjahanpur, 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 :- 2.11.2023

Mustaqeem.