

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46534 of 2023

Applicant :- Irshad

Opposite Party :- State of U.P.

Counsel for Applicant :- Shams Uz Zaman

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Shams Uz Zaman, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel 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-Irshad, seeking enlargement on bail during trial in connection with Case Crime No. 236 of 2023, under Section 376 IPC, registered at Police Station Kanth, District Moradabad.
4. The FIR of the matter was lodged on 26.6.2023 by the victim herself against the applicant and seven other persons. The victim was married on 27.6.2020 to Nasru, the brother of the applicant. There was some matrimonial discord between them. From the wedlock two children were born. The applicant pronounced talak thrice and ousted the victim from the house. The allegation against the applicant is that since the marriage of the victim, he had an evil eye on her and had raped her several times. Even co-accused Ilyas, the jeth of the victim used to enrage her modesty.
5. Learned counsel for the applicant argued that the applicant is the devar of the victim and has been falsely implicated in the present case only because of the reason that there is a matrimonial dispute between the victim and her husband. It is argued that prior to the present incident, the victim had lodged an FIR against her husband on 18.6.2020 which was registered as Case Crime No.145 of 2020 under Section 376, 323, 506 IPC, Police Station Kanth, District Moradabad in which applicant, Iliyas and Jameer were also named as accused, copy of the same is annexed as Annexure No.6 to the affidavit filed in support of bail application. In the said incident,

the allegation against the Nasru, the husband of the victim was of committing rape upon her. It is argued that since there was a marital dispute going on between the victim and Nasru, her husband and the applicant is the brother of Nasru, he has been falsely implicated in the present case. It is argued that except of the present case and the earlier FIR the applicant has no other case pending against him. The applicant is in jail since 17.8.2023.

6. Per contra learned counsel for the State opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that the applicant is the devar of the victim. There is a dispute going on of the victim with her husband. Even previously an FIR was lodged in which the applicant was made an accused and there was allegation of rape against Nasru, the husband of the victim.

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-**Irshad**, 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 :- 2.11.2023

Gaurav Kuls