

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46526 of 2023

Applicant :- Shahedeen

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

Counsel for Applicant :- Pankaj Kumar

Counsel for Opposite Party :- G.A., Pramod Kumar Dwivedi

Hon'ble Samit Gopal,J.

1. List revised.
2. Heard Sri Mrityunjay Dwivedi, Advocate, holding brief of Sri Pankaj Kumar, learned counsel for the applicant, Sri Pramod Kumar Dwivedi, learned counsel for the first informant and Sri Ram Prakash Shukla, 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 Shahedeen, seeking enlargement on bail during trial in connection with Case Crime No. 199 of 2023, under Sections 363, 366-A, 376 I.P.C. Section 4 POCSO Act, registered at Police Station Rajapur, District Chitrakoot.
4. Learned counsel for the State states that he has received instructions for which time was granted to him vide order dated 02.11.2023.
5. The FIR of the matter was lodged on 11.09.2023 by Shafique against Azad Khan alleging therein that on 11.09.2023 at about 07:00 am his daughter aged about 17 years went to the school for studying but she did not return back till 12:00 pm. On search and after going to the school it was found that the school was locked. She was searched a lot but could not be traced. On 10.09.2023 in the evening she was talking on her phone and on asking and scolding her, was informed that she is talking to Azad Khan.
6. Learned counsel for the applicant argued that the applicant is not named in the FIR and he has been falsely implicated in the present case. It is argued that the name of the applicant has surfaced for the first time in the statements of the victim under Section 161 Cr.P.C.

and 164 Cr.P.C. It is argued that the First Information Report was lodged under Sections 363, 366-A IPC. The victim in her statement under Section 161 Cr.P.C. did not state of any sexual assault on her. Subsequently in her statement under Section 164 Cr.P.C. she states of going on the call of the applicant and there was physical relationship established between them. It is argued that there was some discussion of marriage between the family of the applicant and the victim. While placing para 19 of the affidavit it is argued that both the parties are willing and ready to perform marriage as was already fixed. It is argued that charge sheet in the matter has been submitted against the applicant and as such there are no chances of the applicant tampering with evidence. He further argued that the applicant has no criminal history as stated in para 22 of the affidavit and is in jail since 26.09.2023.

6. Learned counsel for the first informant did not oppose the prayer for bail and argued that the marriage between the parties has been fixed and the same would be solemnized. Learned counsel for the State opposed the prayer for bail.

7. After having heard learned counsels for the parties and perusing the records, it is evident that the applicant is not named in the FIR. Subsequently his name has surfaced in the statements of the victim during investigation. There has been some discussion of marriage between the parties, the same was could not materialize but as of now the same would be solemnized between them.

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 **Shahdeen**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties **(one of the sureties of the applicant will be his family member)** 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.)