Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46717 of 2023

Applicant :- Santosh
Opposite Party :- State of U.P.
Counsel for Applicant :- Kapil Tyagi
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

List has been revised.

Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, **Santosh,** with a prayer to release him on bail in **Case Crime No. 365 of 2023, under Sections 376, 306 IPC, Police Station Sector 63, District- Gautam Buddha Nagar,** during pendency of trial.

There are allegations in the FIR regarding commission of offences of rape and the abetment of suicide of the deceased against the applicant, one named and two unnamed co-accused.

Learned counsel for the applicant has submitted that it is a case of false implication. Prior to implication of the applicant in the present case, FIR was lodged on 8.8.2023 at 20:57 hours against co-accused, Shahnawaj Hussain and one unnamed accused regarding committing the offence of gang rape and murder of the deceased. After one and half hours, another FIR was lodged on the same day against the applicant, co-accused Shahnawaj Hussain and two unknown accused. Learned counsel for the applicant has submitted that in the FIR itself it is clear that applicant and deceased worked together in Haldiram Company and they had friendship. The deceased suffered injuries somewhere else. The applicant has been falsely implicated in this case by the sister of the deceased. He has no criminal history to his credit and is languishing in jail since 13.8.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

Learned A.G.A. has opposed the prayer for bail of the applicant and pointed out to the statement of the neighbour of the applicant wherein she has stated that the deceased was friend of the applicant and she used to frequent the house of the applicant. On 7.8.2023 she had seen the deceased going inside the room of the applicant and thereafter she entered into quarrel with applicant. Deceased was saying that she will meet his brother and sister-in-law (Bhabhi) otherwise she will not go. Applicant said that his brother and sister-in-law will come in evening and thereafter he went away from room. The deceased came out behind him and suddenly climbed back the stairs on first floor of the house and jumped from roof.

Learned counsel for the applicant has rejoined and submitted that even accepting the statement of the neighbour, there is no evidence against the applicant of abetting the suicide of the deceased. The implication of the applicant under Section 376 IPC is unwarranted. There is no evidence of the same.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant; keeping in view uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering the dictum of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022 and*** *considering 5-6 times overcrowding in jails over and above their capacity by under trials* and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuse the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail 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 of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) 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.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 2.11.2023
Ruchi Agrahari

Digitally signed by :-
RUCHI AGRAHARI
High Court of Judicature at Allahabad