

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47091 of 2023

Applicant :- Sanjesh Kumar @ Sanjeev

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Kumar Sonkar, Ravi Shankar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Ravi Shankar Tripathi, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- **Sanjesh Kumar @ Sanjeev**, seeking enlargement on bail during trial in connection with Case Crime No. 315 of 2023, under Sections 363, 366, 376, 342, 328 I.P.C., Police Station Kotwali, District Budaun.

3. The first information report of the present matter was lodged on 03.08.2023 by Nawab Khan under Section 363 I.P.C. against the applicant and Shobit Yadav alleging therein that on 30.07.2023 his daughter aged about 17 years had gone to market with her younger sister where the applicant who was working with her in a hospital came and told her that there is some important work and she has to go with him on which she sat on his motorcycle, then co-accused Shobit Yadav also sat on the motorcycle, lured her daughter and enticed her away. Her younger sister came back home and told about it to her mother. She was searched a lot but could not be traced.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim is a major girl aged about 19 years as per the certificate of the Chief Medical Officer, Budaun. It is argued that as per the statement of the victim recorded during investigation she states that she was given something to drink by Dr. Sarikh after which she became unconscious and when she regained her consciousness she found herself to be in a bus and then she and the applicant went to a jungle where they travelled on foot and then reached a room where they stayed and the applicant established physical relationship. It is argued that the entire story is a concocted story just in order to falsely implicate and harass the applicant. It is argued that the victim went with the applicant on 30.07.2023 and was recovered on 08.08.2023, in between during the said period, she travelled with the applicant on a motorcycle, but did not raise any resistance or objection whatsoever. It is argued that the medical examination of the victim does not support the prosecution case as the doctor did not find any injury on her body either externally or internally. It is argued that the applicant and the victim were working together in a hospital, they were well-known and had acquaintance with each other. It is argued that the first information report has been lodged on 03.08.2023 of the applicant taking away the victim on 30.07.2023 which is after

a period of 04 days for which there is no plausible explanation regarding delay in lodging of the first information report. The applicant has no criminal history as stated in para 24 of the affidavit and is in jail since 12.08.2023.

5. *Per contra*, learned counsel for the State opposed the prayer for bail.

6. After having heard learned counsel for the parties and perusing the record, it is evident that the first information report has been lodged after 04 days of the alleged incident. The victim travelled with the applicant through various modes but did not raise any resistance or objection. She has been opined to be a major girl by the Chief Medical Officer concerned. The applicant and the victim were working together in a hospital.

7. 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.

8. Let the applicant- **Sanjesh Kumar @ Sanjeev**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties (**one of the sureties will be of family members and the other will be of a local person**) 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.

9. 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.

10. The bail application is **allowed**.

Order Date :- 6.11.2023

AS Rathore

(Samit Gopal,J.)