Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47120 of 2023

Applicant :- Pintu
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Ajay Kumar Pathak
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

List has been revised.

Heard learned counsel for the applicant; Sri Pankaj Kumar Sharma, Advocate, holding brief of Sri Rahul Pandey, learned counsel for the informant learned AGA for the State and perused the material placed on record.

The instant bail application has been filed on behalf of the applicant, **Pintu,** with a prayer to release him on bail in **Case Crime No. 89 of 2023, under Sections 452, 376 IPC and 3/4 POCSO Act, Police Station Kotwali Hasayan, District- Hathras,** during pendency of trial.

There are allegations against the applicant of commission of offences of rape and penetrative sexual assault after entering into the house of child victim.

Learned counsel for the applicant has submitted that there is difference in the statement of the victim before the doctor and in her statements under Sections 161 and 164 Cr.P.C. with regard of the manner, date and time of the incident. As per the ossification test report, the age of the victim is 17-18 years. Therefore, she is not minor. The medical report of the victim does not supports the prosecution witness. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 14.6.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

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 deserves any indulgence. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

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 :- 6.11.2023
Ruchi Agrahari

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