

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47152 of 2023

Applicant :- Manisha And Another

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

Counsel for Applicant :- Hari Bans Singh,Dharm Jeet Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Sri Nagendra Kumar Mishra, learned brief holder submits that notice of the instant application has been served on the opposite party no. 4/C.W.C. and opposite party no. 2/informant on 07.11.2023. The relevant endorsements have been produced by the learned A.G.A. The same are taken on record. However, when the case is called out, none appears on behalf of the said opposite parties nor any counter affidavit has been filed on their behalf.
2. Heard counsel for the applicants and learned brief holder for the State-opposite party.
3. The instant bail application under Section 439 Cr.P.C. has been filed with the prayer to enlarge the applicants on bail in Case Crime No. 102 of 2023 under Sections 363 and 366A of I.P.C. and Sections 16/17 of the Protection of Children from Sexual Offences Act, 2012, Police Station- Bariya, District- Ballia, during the pendency of the trial.
4. Counsel for the applicants contend that the applicants were not named in the first information report and have been falsely implicated in the instant case. There are major inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. The said inconsistencies discredit the prosecution case. In the statement of the victim under Section 161 Cr.P.C., there are no allegations against the applicants. It is next contended that the co-accused, Sumit Kumar, having identical role, has been granted bail by this Court in Criminal Misc. Bail Application No. 45826 of 2023 vide order dated 31.10.2023. The applicants claim parity. The applicants are in jail since 04.08.2023, having no criminal history. In case they are enlarged on bail, they will not misuse the said liberty.
5. Learned brief holder for the State has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record this Court prima facie finds that there are inconsistencies in the statements of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. The co-accused, Sumit Kumar, having identical role, has been granted bail by this Court. At present, there is no substantive evidence against the applicants. Further, the applicants have no criminal antecedents and have remained confined for more than three months and after submission of the charge-sheet there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicants, if enlarged on bail, would either tamper with the evidence or delay the trial or intimidate the witness, without commenting on merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

7. Let the applicants- **Manisha and Jai Prakash @ Janu**, involved in aforesaid case be released on bail on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the conditions that they:

- (i) shall appear on the date fixed by the trial court;
- (ii) shall not tamper with the prosecution evidence;
- (iii) shall not pressurize the prosecution witnesses.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 17.11.2023
Sachin Mishra