

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 57708 of 2022

Applicant :- Raju

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

Counsel for Applicant :- Dilip Kumar Goswami, Mohammad Zakir, Sanjay Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Shatrughna Yadav, learned AGA for the State apprised the Court that notice has been served to the informant of the case in the month of December, 2022. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Mohammad Zakir, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 608 of 2018, under Sections 363, 342, 368, 376DA IPC & 5(G), 5(J)(ii), 5(L)/6 POCSO Act, Police Station- Anupshahr, District- Bulandshahr, during pendency of the trial in the court below.
5. Learned counsel for the applicant submitted that this is the second bail application filed on behalf of the applicant and his first bail application was dismissed by this Court on merit vide order dated 18.05.2022 but after rejection of the first bail application of the applicant, when on 24.09.2022 victim appeared before the trial court then she did not support the prosecution case and she was declared hostile. He further submitted that statement of the victim has been annexed as Annexure No. 8 to the affidavit. He further submitted that as victim of the case has already been declared hostile and applicant is in jail since 08.11.2021 i.e. for more than one and half years, therefore, applicant may be enlarged on bail.
6. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that during trial, victim of the case has been declared hostile and applicant is in jail since November, 2021 i.e. for more than one and half years.

7. I have heard learned counsel for the parties and perused the record of the case.

8. Although, this is the second bail application filed on behalf of the applicant but it appears that after rejection of the first bail application of the applicant when victim appeared before the trial court then she did not support the prosecution case and has been declared hostile.

9. Further, applicant is in jail since November, 2021 i.e. for more than one and half years.

10. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

11. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

12. Let the applicant- **Raju** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

13. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

14. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 17.10.2023

KK Patel