Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48542 of 2023

Applicant :- Anish Kumar
Opposite Party :- State of U.P.
Counsel for Applicant :- Veer Singh,Reeta Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A. for the State.

There is allegation against the applicant of committing offence of gang rape, criminal intimidation, extortion and offence under Section 67 I.T. Act.

Learned counsel for the applicant submits that the present case is of implication by way of counter blast. Earlier on 04.08.2023 a first information report was lodged by the applicant against five brothers of the victim, who had beaten him, under Sections 147, 323, 504, 506 I.P.C. Subsequently present first information report was lodged on 09.08.2023 under Sections 376, 506, 386 I.P.C. by the victim herself. Learned counsel for the applicant further submits that the applicant was seriously beaten by the brothers of the victim earlier and after he lodged the first information report, he has been falsely implicated in this case by the victim. There is no evidence collected by the Investigating Officer regarding video of victim made viral nor alleged offence committed by the applicant and the other co-accused. Applicant is in jail since 10.08.2023.

Learned AGA has opposed the prayer for bail but could not dispute the above submissions.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the 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 trial; larger mandate of the Article 21 of the Constitution of India and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021 and considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, **Anish Kumar,** involved in Case Crime No.449 of 2023, under Sections 376-D, 506, 386 I.P.C and 67 IT Act, 2008, Police Station Soraon, District- Prayagraj 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 subject to following conditions. Further, before issuing the release

order, the sureties be verified.

(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, the complainant is free to move an application for cancellation of bail before this court.

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

Order Date :- 21.11.2023
SS

Digitally signed by :-
SURENDAR SINGH NARANG
High Court of Judicature at Allahabad