

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48704 of 2023

Applicant :- Mumtaj

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

Counsel for Applicant :- A.Z.Khan

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri A.Z. Khan, learned counsel for the applicant and Sri Ghanshyam Mishra, learned brief holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 476 of 2022, under Sections 377, 511 IPC & 5M/6 POCSO Act, Police Station- Kotwali Dehat, District- Saharanpur, during pendency of the trial in the court below.

3. 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 on merit by this Court on 01.03.2023 and he is pressing the instant second bail application on the ground that informant of the case i.e. father of the victim, after rejection of the first bail application of the applicant, when appeared before the trial court then he did not support the prosecution case and has been declared hostile. He further submitted that till date, statement of the victim, the boy, aged about 10 years could not be recorded by the trial court.

4. He further submitted that applicant is not having any criminal history and he is in jail since 22.11.2022 i.e. for last more than a year.

5. Per contra, learned AGA opposed the prayer for bail and submitted that after considering the entire facts of the case, first bail application of the applicant was dismissed and as till date, victim of the case could not be examined by the trial court, therefore, merely on the basis of testimony of the informant i.e. father of the victim, applicant should not be released on bail.

6. I have heard learned counsel for the parties and perused the

record of the case.

7. This is the second bail application filed on behalf of the applicant and his first bail application was dismissed on merit by this Court on 01.03.2023 and it appears that till date, victim, who is boy aged about 10 years, could not be examined by the trial court, however, his father was examined by the trial court and he did not support the prosecution case. I find force in the argument advanced by learned AGA that in absence of the statement of the victim recorded by the trial court, it would not be proper to release the applicant on bail on the ground that informant has been declared hostile.

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

9. 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.

10. However, it is open for the applicant to renew his prayer for bail after the testimony of the victim.

Order Date :- 12.12.2023

KK Patel