

Neutral Citation No. - 2023:AHC:238349

RESERVED ON 12.12.2023

DELIVERED ON 16.12.2023

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49162 of 2023

Applicant :- Amir

Opposite Party :- State of U.P.

Counsel for Applicant :- Kaushal Kumar Pandey, Anand Ji Mishra

Counsel for Opposite Party :- G.A., Avnish Kumar Srivastava

Hon'ble Siddharth, J.

Heard Shri Anand Ji Mishra learned counsel for the applicant; Shri Avnish Kumar Srivastava, learned counsel for the informant and learned A.G.A.

The instant bail application has been filed on behalf of the applicant, Amir, with a prayer to release him on bail in Case Crime No. 401 of 2021, under Sections 376, 354, 504, 506 IPC Police Station Mundali, District-Meerut, during pendency of trial.

There is allegation in First Information Report that Nikah of informant took place about 11 months ago with Salman. Salman went outside in connection with his work and then on 20.9.2021 at about 11 P.M. the brother-in-law (Devar) of the victim, Amir, the applicant, forcibly entered in her room and after making her smell some intoxicating substance committing offence of rape and threatened her of life, in case she disclosed any one about the incident. She made complaint of the applicant to her father-in-law, Yusuf, who also committed alleged

offence. Co-accused, Haroon, who is cousin of her father-in-law, also touched her inappropriately and stated that since her husband is impotent and lives with enunch, she would live as their mistress. The applicant again committed offence of rape against her. She became ill and was admitted in hospital. After treatment she went to her parental home and informed her sister-in-law(Bhabi) about the incident thereafter First Information Report was lodged.

Learned counsel for the applicant has submitted that applicant is brother-in-law(Dewar) of the victim and has been falsely implicated in this case. During her treatment in hospital she never informed doctor about the incident of rape against her .The sister of the victim has also not stated anything against the applicant.

Learned counsel for the applicant has further submitted that since husband of the victim was not residing with her and giving due attention to her she has falsely implicated her brother-in-law, father-in law and cousin of her father in -law. Applicant was aged about 19 years at the time of alleged incident. He has been falsely implicated in this case. His life has been spoiled because of dispute between victim and her husband. The applicant is in jail since 29.8.2023 and has no criminal history.

Learned A.G.A. and learned counsel for the informant have opposed the bail prayer of the applicant but could not dispute the aforesaid facts.

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; considering the dictum of Apex Court in *the* 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***; 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 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.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any 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 to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. 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 default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his 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.

Order Date :- 16.12.2023

Atul kr. sri.