

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49445 of 2023

Applicant :- Gaurav

Opposite Party :- State of U.P.

Counsel for Applicant :- Akhilesh Kumar Mishra, Devendra Kumar

Counsel for Opposite Party :- G.A., Mohd. Akbar Shah Alam Khan

Hon'ble Siddharth, J.

Heard Sri Rishabh Tiwari, Advocate holding brief of Sri Akhilesh Kumar Mishra, learned counsel for the applicant; Sri Mohd. Akbar Shah Alam Khan, learned counsel for the informant and learned A.G.A. for the State and perused the material on record.

By means of this application, the applicant, Gaurav, who is involved in Case Crime No. 130 of 2021 at Police Station-Ratanpuri, District- Muzaffarnagar under Sections 147, 148, 149, 323, 324, 376-D, 504, 506 IPC and is in jail since , is seeking enlargement on bail during the trial.

Counsel for the applicant submits that co-accused, Ankit Kumar, has been enlarged on bail by the following order dated 01.11.2023 passed in Criminal Misc. Bail Application No. 45484 of 2023 quoted hereinbelow :-

"By means of the bail application the applicant has prayed to be enlarged on bail in Case Crime No. 130 of 2021 at Police Station-Ratanpuri, District-Muzaffarnagar under Sections 147, 148, 149, 323, 324, 376-D, 504, 506 IPC. The applicant is in jail since 27.07.2023.

The bail application of the applicant was rejected by the learned trial court on 18.09.2023.

The following arguments made by Shri Akhilesh Kumar Mishra, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri J.P. Mishra, learned counsel for the informant and Shri Chandan Agrawal, learned AGA from the record, entitle the applicant for grant of bail:

1. Delay in taking out the proceedings under Section 156 (3) Cr.P.C. and the consequent lodgement of the F.I.R. in the facts and circumstances of this case are fatal to the prosecution case.

2. *The F.I.R. is the result of village rivalry between the parties.*
3. *The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.*
4. *The police authorities upon investigation did not find any implicatory evidence against the applicant and a final report was filed exonerating him. A protest petition was filed. Thereafter, the applicant has been summoned by the trial court.*
5. *Medical evidence to corroborate commission of rape by the applicant with the victim has not been produced by the prosecution.*
6. *Prosecution evidence does not connect the applicant with the offence.*
7. *The applicant does not have any criminal history apart from this case.*
8. *The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.*

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Ankit Kumar be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

- (i) The applicant will not tamper with the evidence or influence any witness during the trial.*
- (ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.*

It has been contended on behalf of the informant that the police authorities failed to lodge the first information report despite the fact that the victim was taken to the police station

after her treatment at the hospital.

The Senior Superintendent of Police, Muzaffarnagar to inquire into the lapses on the part of the police authorities and he shall take appropriate action as per law, if any. "

He has further submitted that since the role of the applicant is identical to that of co-accused, Ankit Kumar, who has already been enlarged on bail, he is also entitled to be enlarged on bail on the ground of parity and for the reasons given in the order of co-accused.

The prayer for bail has vehemently been opposed by learned A.G.A.

Considering the submissions made by learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of parity.

In view of the above, let the applicant be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned with the following conditions :-

(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 misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails 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, it shall be a ground for cancellation of bail.

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

Order Date :- 7.12.2023

Rohit