

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50310 of 2023

Applicant :- Nazim And Another

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

Counsel for Applicant :- Ankit Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vivek Varma,J.

1. Learned AGA submits that notice of this bail application has been served upon the opposite party nos. 2 and 4 on 22.11.2023 and 21.11.2023 respectively. The receiving endorsements have been produced by learned AGA, the same are taken on record. However when the case is called out, none appears on behalf of the opposite party no. 2 and 4 nor any counter affidavit has been filed on their behalf.

2. Heard Sri Ankit Srivastava, counsel for the applicants, Sri Prateek Tyagi, learned A.G.A. for the State and perused the record.

3. The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicants on bail in Case Crime No. 118 of 2023, under Sections 363, 354 I.P.C., and 7/8 of POCSO Act, Police Station- Chandinagar, District- Baghpat during pendency of the trial.

4. Counsel for the applicant submits that the applicants have been falsely implicated in the instant case. The incident is alleged to have occurred on 31.8.2023 and the first information report was lodged on 2.9.2023. The applicants did not act inappropriately with the victim. The victim in her statement under Section 164 Cr.P.C. stated that the applicants along with another had taken her forcibly to Muradnagar. From Muradnagar they went to Delhi and thereafter to Bihar. It is contended that it is highly improbable that the victim was taken by the applicants by a public transport to various places and she did not raise any protest or alarm. The victim refused to get herself medically examined. Further there is no allegation of any sexual harassment against the applicants. In her statement to the doctor also the victim had stated that the applicants did not behave indecently with her. The applicants are in jail since 9.9.2023 having no criminal history. In case they are enlarged on bail, they will not misuse the said liberty.

5. Learned A.G.A. has opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

6. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the first information report was lodged belatedly. At this stage, the victim cannot be said to be forcibly taken by the applicants to various places by public transport. The victim appears to have gone voluntarily. In her statement under Section 164 Cr.P.C. there is no allegation of indecent behaviour against the applicants. The victim has refused to get herself medically examined. Further the applicants have no criminal antecedents. The applicants have presently remained confined for more than two months and there is no hope of early conclusion of trial, more so when no reasonable apprehension has been brought to the fore by the State that the applicants, if enlarged on bail, would either tamper with the evidence or intimidate the witness, without commenting on the merits of the case, I am of the opinion that the applicants are entitled to be enlarged on bail.

7. Let the applicants, **Nazim** and **Ejaz** involved in the aforesaid case be released on bail on their furnishing a personal bond and two sureties each of the like amount to the satisfaction of court concerned on the following conditions that:

- i. the applicants shall not tamper with the prosecution evidence;
- ii. the applicants shall not pressurize the prosecution witness;
- iii. the applicants shall appear on each and every date fixed by the trial court.

8. In case of breach of any of the above conditions, the prosecution shall be at liberty to move bail cancellation application before this Court.

Order Date :- 2.12.2023
S.S.