Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52370 of 2023

Applicant :- Jeet Alias Ajeet
Opposite Party :- State Of U.P. And 3 Others
Counsel for Applicant :- Vivek Kumar Singh,Mayank Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

1. *Vakalatnama* has been filed by Sri Pankaj Bharti, on behalf of informant, which is taken on record.

2. Heard learned counsel for the applicant as well as the learned AGA for the State and perused the material placed on record.

3. The instant bail application has been filed on behalf of the applicant, Jeet Alias Ajeet, with a prayer to release him on bail in **Case Crime No. 85 of 2023, under Sections 363, 354A, 376(3) of IPC and Section 3/4(2) of POCSO Act, Police Station- Garhipukhta, District- Shamli,** during pendency of trial.

4. There are allegations against the applicant of abduction of a minor girl, commission of offences of rape, sexual molestation and penetrative sexual assault.

5. Learned counsel for the applicant has submitted that as per ossification test report the age of victim is about 17-18 years and, therefore, she is not minor. She accompanied the applicant to bus stand, Shamli, and went to Haridwar as per statement recorded under Section 164 Cr.P.C. She has admitted interacting with Aman and, thereafter, entered into physical relationship with co-accused, Himanshu Shukla and several others. In the statement of victim recorded under Section 164 Cr.P.C., she has not made allegation of rape against the applicant, but in the statement of victim recorded under Section 161 Cr.P.C., she has made allegation of rape against the applicant. Both the statements are contradictory in nature. Learned counsel for applicant has submitted that co-accused, Himanshu Shukla, has already been enlarged on bail vide bail application No. 51504/2023. The applicant has been falsely implicated in this case. He has no criminal history to his credit and is languishing in jail since 13.10.2023. The trial in the aforesaid case is not likely to be concluded in near future.

6. Learned A.G.A. and learned counsel for informant vehemently opposed the prayer for bail of the applicant but they do not dispute

the dispute the aforesaid arguments advanced by learned counsel for applicant. In case the applicant is released on bail, she will again indulge in similar activities and will misuse the liberty of bail.

7. Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the applicant, keeping in 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 case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P. (Crl.) No. 5191 of 2021, judgement dated 11.7.2022*** *and considering 5-6 times overcrowding in jails over and above their capacity by under trials* and without expressing any opinion on the merits of the case, let the applicant involved in the aforesaid crime 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 with the following conditions that :-

(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.

8. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

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

Order Date :- 6.12.2023
Abhishek

Digitally signed by :-
ABHISHEK YADAV
High Court of Judicature at Allahabad