

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51033 of 2023

Applicant :- Subhash @ Chandra Shekhar

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

Counsel for Applicant :- Nikhil Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant and learned A.G.A for the State.

Learned counsel for the applicant has submitted that co-accused, Natthulal has already been enlarged on bail vide order dated 6.7.2023 in Criminal Misc. Bail Application No. 24976 of 2023 by the following order:-

"Heard learned Counsel for the applicant and learned A.G.A. for the State.

The instant bail application, under Section 439 Cr.P.C., has been filed with a prayer to enlarge the applicant on bail in Case Crime No. 112 of 2022, under Sections 323, 504, 342, 354Kha, 370A, 373, 368 I.P.C., and section 7/8 POCSO Act, Police Station-Raypurwa, District- Kanpur Nagar during pendency of the trial.

Counsel for the applicant submits that the applicant was not named in the first information report and has been falsely implicated in the instant case. There are contradictions in the statement of the victim under Sections 161 Cr.P.C. and 164 Cr.P.C. In the statement of victim under Section 161 Cr.P.C. there is no allegation of indecent behaviour or sexual assault against the applicant. Upon the victim going into custody of her parents bald allegation has been levelled against the applicant and his son. It is next submitted that the co-accused Dhanpal has been granted bail by this Court in Criminal Misc. Bail Application No. 24381 of 2023 vide order dated 31.5.2023. The applicant does not have any criminal

history. The applicant is in jail since 7.1.2023. In case he is enlarged on bail, he will not misuse the said liberty.

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

Having regard to the submissions made but without commenting on merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

Let the applicant, Natthulal involved in the aforesaid case be released on bail on his 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 applicant shall not temper with the prosecution evidence;
- ii. the applicant shall not pressurize the prosecution witness;
- iii. the applicant shall appear on each and every date fixed by the trial court.

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

The case of the applicant stands on identical footing, hence the applicant is also entitled for bail for the reasons given in bail application of co-accused on the ground of parity. The applicant is in jail since 6.10.2023.

On the other hand learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, larger mandate of the Article 21 of the Constitution of India, considering 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 and 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, Subhash @ Chandra Shekhar, involved in Case Crime No. 112 of 2022, under Sections 323,504,342,370A,372,373,368,376, 120B IPC, and section 4(2) POCSO Act Police Station- Raypurwa District- Kanpur Nagar, 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 :- 5.12.2023

Atul kr. sri.