Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50979 of 2023

Applicant :- Vinay @ Vicky
Opposite Party :- State of U.P.
Counsel for Applicant :- Sachchida Nand Tiwari
Counsel for Opposite Party :- G.A.

Hon'ble Dr. Gautam Chowdhary,J.

1. Heard learned counsel for the applicant, learned A.G.A for the State and perused the record.

2. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. Learned counsel further submits that initially F.I.R. was lodged by the victim herself in unknown alleging therein that on 24.09.2023 at about 8:00 p.m. she went with one Dharmendra on his Ola car, she knew him for about one month, they visited Vaishali and drank liquor, in the meanwhile she received a phone call from his friend namely Jaggu Kumar, from whom an altercation took place between them, thereafter both of them went to Pal Dhaba, where she came outside the car for attending nature call, where a white car came there wherein 3-4 persons were sitting and they took her and committed her rape simultaneously. Learned counsel for the applicant further submits that in her statement recorded under Sections 161 & 164 Cr.P.C. the victim has made allegation of rape against five persons. Learned counsel for the applicant further submits that in her medical examination her hymen was found old torned and healed and no injury was seen on the person of the victim, thus, medical evidence does not support the prosecution case. Learned counsel for the applicant further submits that there is a delay of seven days in lodging of the F.I.R. without any plausible explanation, the applicant is neither named in the F.I.R., nor the victim identified him, there are various contradictions in the F.I.R. as well as in the statements of victim recorded under Sections 161 & 164 Cr.P.C. regarding manner and place of her alleged kidnapping, during investigation name of applicant came into light, there is no evidence against him and the applicant has falsely been implicated in the case. Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also

been mentioned. It has also been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. He next submits that applicant is languishing in jail since 03.10.2023, having no criminal history.

3. Per contra, learned A.G.A. has opposed the prayer for bail of the applicant by contending that the innocence of the applicant cannot be adjudged at pre trial stage, therefore, he does not deserve any indulgence.

4. After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, without expressing any opinion on merits of the case, this Court is of the view, that the applicant may be enlarged on bail.

5. Let applicant-**Vinay @ Vicky**, involved in Case Crime No. 968 of 2023, under Sections 376-D, 365 I.P.C., Police Station Sahibabad, District Ghaziabad, be enlarged on bail on furnishing a personal bond and two heavy local sureties each of the like amount to the satisfaction of the court concerned subject to the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

6. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail in accordance with law.

7. The bail application is **allowed**.

Order Date :- 5.12.2023
Mustaqeem.

Digitally signed by :-
MOHD MUSTAQEEM KHAN
High Court of Judicature at Allahabad