

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51427 of 2023

Applicant :- Shah Alam

Opposite Party :- State of U.P.

Counsel for Applicant :- Janardan Yadav

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. FIR of the present case was lodged against applicant and five others and according to the FIR, on 06.05.2023 daughter of the informant aged about 22 years had gone somewhere from her house. It is further mentioned in the FIR that informant was having suspicion that co-accused Umar has enticed her and when informant came to the house of co-accused Umar, the applicant, his brother and his other family members abused him.

3. Learned counsel for the applicant submitted that being uncle of co-accused Umar, applicant has been made accused in the present matter and victim admittedly is major girl aged about 22 years and she was having love affair with co-accused Umar but under the pressure of her parents, she started making allegation of gangrape against the applicant and other accused persons including co-accused Tanjim. He further submitted that after considering the entire facts of the case, bail application of co-accused Tanjim has been allowed by co-ordinate Bench of this Court vide order dated 17.10.2023. Apart from the co-accused Tanjim, the co-accused Mohammad, brother of the accused-Umar has also been enlarged on bail by co-ordinate Bench of this Court vide order dated 09.11.2023 passed in Criminal Misc. Bail Application No. 48454 of 2023, copy of which order has been produced before this Court and is taken on record. He further submitted that though the case of applicant is at par with co-accused Tanjim but is similar to the case of the co-accused Mohammad, ergo, the applicant is entitled for bail on the ground of parity. 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 05.08.2023 having no criminal history.

4. 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. In case the applicant is released on bail he will again indulge in similar activities and will misuse the liberty of bail.

5. Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence, and all attending facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail. Hence the bail application is **allowed**.

6. Let applicant **Shah Alam** involved in Case Crime No. 300 of 2023 under Sections 366, 504, 506, 352, 376D I.P.C., Police Station Jeeyanpur, District Azamgarh, be released 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 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.

II. The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

III. In case, the applicant misuses the liberty of bail 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.

IV. 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.

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

Order Date :- 1.12.2023

Mustaqeem./ S.Ali