

Court No. - 74

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52108 of 2023

Applicant :- Brijesh Kumar

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

Counsel for Applicant :- Avijit Saxena

Counsel for Opposite Party :- G.A.,Dev Prakash Sharma,Priyanka Devi

Hon'ble Vivek Varma,J.

1. Heard Sri Avijit Saxena, learned Counsel for the applicant, Sri Anupam Anand learned brief holder for the State and Ms. Priyanka Devi, counsel for the applicant. Perused the record.

2. 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. 156 of 2023, under Sections 452, 354, 323, 506 I.P.C., and 8 POCSO Act, Police Station- Mahobkanth, District- Mahoba during pendency of the trial.

3. Counsel for the applicant submits that the applicant has been falsely implicated in the instant case. Placing reliance on the high school mark-sheet of the victim it is submitted that the victim is aged more than 17 years. Further, it is case of failed relationship between the parties. The allegations have emerged solely on account of the fact that the parents of the victim have totally disapproved the conduct of the applicant. The applicant was beaten by the family members of the informant and has been implicated in the instant case. The applicant did not act inappropriately with the victim. In the alleged incident the victim has also received injuries. Counsel for the applicant further contends that the victim in her statement under dated 161 Cr.P.C. stated that the incident occurred at her shop whereas in her statement under Section 164 Cr.P.C. the victim stated that the applicant came at her house when she was alone. It is contended that the said inconsistencies discredit the prosecution case. The applicant is a young student and his career would be jeopardized as a result of this instant criminal case. The applicant does not have any criminal history. The applicant is in jail since 15.11.2023. In case he is enlarged on bail, he will not misuse the said liberty.

4. Learned A.G.A. and counsel for the informant have opposed the prayer for bail but could not satisfactorily dispute the aforesaid submissions from the record.

5. Having heard counsel for the parties and having perused the record, this Court prima facie finds that the inconsistencies in the statement of the victim under section 161 Cr.P.C. and 164 Cr.P.C. discredits the prosecution case. At this stage, there is no substantive evidence against the applicant. The applicant has no criminal antecedents. Further the applicant has presently remained confined for almost one month 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 applicant, 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 applicant is entitled to be enlarged on bail.

6. Let the applicant, **Brijesh Kumar** 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 tamper 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.

7. 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 :- 14.12.2023
S.S.