

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52286 of 2023

Applicant :- Bablu

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

Counsel for Applicant :- Ajay Kumar,Ashok Kumar Garg

Counsel for Opposite Party :- G.A.,Syed Mohammed Jafer Husain

Hon'ble Siddharth,J.

Heard learned counsel for the applicant, Sri Mani Shanker Pandey, learned counsel for the informant and learned A.G.A. for the State.

Learned AGA informs that notice on opposite party no.2 has been served but no one has turned up to oppose this bail application.

There is allegation in the first information report that the daughter of the informant was sleeping in the varandha when the applicant came on the roof of the house from back side and after coming down from the stairs touched the breast of his daughter who got awake and raised alarm. Hearing her cries her mother came and thereafter the applicant after abusing, threatening and pushing her jumped from the roof on back side and ran away.

Learned counsel for the applicant submits that the applicant and the victim had consenting relation-ship and the manner of his coming in side the house from the back of the house of the roof and then coming down to the place where the victim was sleeping raises doubt about the prosecution story. Initially implication was made under Sections 354-B, 504, 506 I.P.C. and 7/8 of POCSO Act but later on the basis of the statement of the victim under Section 164 Cr.P.S recorded under the pressure of her family members applicant was implicated under Section 376, 452 I.P.C along with Section 3/4 of POCSO Act. No sign of rape was found on the person of victim. Photographs of the victim and applicant in happy times have also been brought on record. Learned counsel for the applicant submits that charge-sheet has already been submitted against the applicant on 23.08.2023. There is no possibility of tampering with the witnesses. He is in jail since 17.07.2023

Learned AGA has opposed the prayer for bail but could not dispute the above submissions.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping 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 and 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, **Bablu**, involved in Case Crime No.92 of 2023, under Sections 376, 504, 506, 452 I.P.C and 3/4 of the POCSO Act, Police Station Sultanpur Ghosh, District- Fatehpur 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.

(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.

In case of breach of any of the above conditions, the complainant is free to move an application for cancellation of bail before this court.

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

Order Date :- 15.12.2023

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