

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53006 of 2023

Applicant :- Sanjay Yadav

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

Counsel for Applicant :- Bhriguram Ji,Dhirendra Singh,Shailendra Kumar Gupta,Shashi Shankar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,J.

Heard learned counsel for the applicant, Sri Shailendra Kumar Gupta, learned counsel for the informant and learned A.G.A. for the State.

Despite time granted to the learned counsel for the informant on 11.12.2023 no one has filed counter affidavit. He prays for further time to file counter affidavit. The prayer on behalf of the informant is declined.

There are allegations against the applicant of committing abduction of minor girl with intent to marry, commission of offence of rape, intentional insult, criminal intimidation and penetrative sexual assault.

Learned counsel for the applicant submits that it is a case of false implication. Implication under POSCO Act is not correct. Victim is aged about 16 years as per ossification test report. Given margin of two years on higher side, she can be considered to be major. First information report is delayed by 22 days. Initially victim did not make any allegation in her statements recorded under Sections 161 & 164 Cr.P.C against the applicant hence police submitted final report. Thereafter on the application made by the informant side further investigation was conducted and fresh statements of the victim were recorded wherein she has alleged commission of offence of rape by the applicant and hence applicant has been implicated again in this case.

Learned counsel for the applicant further submits that the applicant is being implicated falsely after pressuring the police. He has no criminal history to his credit and is in jail since 15.10.2023.

Learned counsel for the informant has submitted that subsequently in the medical examination of the victim injuries were found on her private parts. It has further been submitted that initially the victim was under threat and fear hence she did not stated correct facts in her earlier statements. Applicant is not entitled to be enlarged on bail.

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

Injuries found is on the private parts of victim in November are not relevant when incident took place in July, 2023.

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, **Sanjay Yadav**, involved in Case Crime No.328 of 2023, under Sections 363, 366, 376(3), 504, 506 I.P.C and under Section 4(2) of POCSO Act, Police Station Kotwali Mahoba, District- Mahoba 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 :- 14.12.2023

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