**Court No. - 64**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 52822 of 2023

**Applicant :-** Sandeep Gautam
**Opposite Party :-** State Of U.P. And 3 Others
**Counsel for Applicant :-** Om Prakash Vishwakarma,Ram Babu Yadav
**Counsel for Opposite Party :-** G.A.

**Hon'ble Siddharth,J.**

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

2. There are allegations against the applicant of committing the offence of abduction of a minor girl with intent to marry, commission of offences of rape and penetrative sexual assault.

3. Counsel for the applicant submits that the victim as per the ossification test report is aged about 18 years, therefore she is not minor. She has admitted going with applicant on his motor-cycle. Applicant took her to Mumbai, where she was discovered by her brother-in-law and thereafter she came back to her home. Counsel for the applicant further submits that the victim eloped with the applicant and travelled with him from District- Jaunpur to Mumbai by public transport and she never made any alarm or cried for help, which proves that she was a consenting party. After a week on coming back to home, she made false allegation against the applicant. The applicant is in jail since 31.08.2023 and has no criminal history to his credit.

4. On the other hand learned A.G.A has opposed the prayer for bail.

5. 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; considering the dictum of Apex Court

in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; 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.

6. Let the **applicant- Sandeep Gautam**, involved in Case Crime No. 224 of 2023, under Sections- 363, 366, 376 of IPC and Sections- 3/4 of POCSO Act, Police Station- Khutahan, District- Jaunpur, 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 misuses the liberty of bail during trial 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.*

*(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.*

7. In case, of breach of any of the above conditions, it shall be a

ground for cancellation of bail.

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

9. Trial court is directed to conclude the trial of the applicant as expeditiously as possible preferably within a period of one year.

10. Registrar (compliance) is directed to communicate this order to the trial Court for necessary compliance within ten days.

**Order Date :-** 8.12.2023
Saif

Digitally signed by :-
SHAIKH SAIF ABDIN
High Court of Judicature at Allahabad