

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53022 of 2023

Applicant :- Salim Mohammad

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Shabbir, Mohd. Tasleem

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Mohd. Shabbir, learned counsel for the applicant, Sri Triveni Saran Rai, learned counsel for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Salim Mohammad, seeking enlargement on bail during trial in connection with Case Crime No.450 of 2023, under Sections 376(2)N, 323, 354, 506 IPC, registered at Police Station Hafizganj, District Bareilly.

4. The FIR of the matter was lodged on 22.9.2023 by the victim herself against the applicant and Tajeem alleging therein that the applicant used to visit her house. Around five years back he came to her house and finding her alone, committed rape upon her and made a video of it. He used to blackmail her by showing the said video and used to establish physical relationship. On 21.9.2023 at about 8 hours he called her and said that soon he will marry her and will also delete the said video. Thereafter he established physical relationship. In the meantime co-accused Tajeem, the brother of the applicant also came there and started enraging her modesty. She opposed the same on which both the persons assaulted her.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that as per FIR the allegation of rape being committed for the first time on the victim is around five years back. Since the last five years, no complaint was made by the victim to the police or any authority. It is argued that charge sheet has been submitted in the matter. The FIR has been lodged with an inordinate delay just in order to falsely implicate the applicant. The relationship was consensual relationship. It is argued that no such video has been recovered by

the investigating agency and there is no evidence against the applicant, para 18 of the affidavit has been placed before the Court. It has also been pointed out that the applicant is not having any criminal history as stated in para 19 of the affidavit. The applicant is in jail since 25.9.2023.

6. Per contra learned counsel for the State opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that allegation of rape being committed upon the victim for the first time is around five years back and the video of the same is alleged to have been recorded but no such video has been recovered. The victim remained silent since last five years. Charge sheet has been submitted in the matter. The relationship was consensual relationship.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-**Salim Mohammad**, be released on bail in the aforesaid case crime number on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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., may be issued and if 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 I.P.C.

(v) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 11.12.2023

Gaurav Kuls