

Court No. - 28

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8701 of 2023

Applicant :- Azharuddin

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home U.P. Civil Secrett. Lko. And Another

Counsel for Applicant :- Satendra Kumar (Singh),Nalin Arora

Counsel for Opposite Party :- G.A.,Sudhir Kumar,Suhail Kashif,Sudhir Kumar

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Shri Satendra Kumar Singh, learned counsel for applicant and learned A.G.A. appearing for the State.

2. The present bail application has been filed by the applicant seeking bail in case crime no.88 of 2023 under Sections 323, 328, 313, 376, 504, 506 I.P.C. registered at Police Station- Madiyaon, District-Lucknow.

3. As per version of the F.I.R. lodged by the victim herself, she used to visit house of the accused frequently. The accused resided at a short distance from the house of first informant. The mother of the accused used to call her at her house. When the mother of the accused was not around, he asked her to come over at his house and administered her some intoxicated substance after mixing it with cold drink. Thereafter, he established physical sexual relations with her saying that as they are about to marry, hence, there would not be any difficulty. As per version of F.I.R., the accused sexually exploited her for last five years. She became pregnant two times earlier but was made to undergo abortion by the accused. When she asked him to marry her, he abused and threatened her. It is further alleged in the F.I.R. that both the sides settled the matter by intervention of local police and it was settled that the accused will marry her. However, a year has gone but he has not married the first informant.

4. It is contended on behalf of the applicant that in this case, F.I.R. has been lodged after an unbelievable delay of five years, it is argued that this unexplained delay is enough to pull out the rug from below the feet of the prosecution case. It is further contended that in the statements of victim recorded under Section 161 and 164 Cr.P.C., she has not stuck to one story. Both the statements are at variance with each other. On the basis of written compromise done at the local police station, it is argued that a different story has been given in that paper. The first informant complained in the concerned police station even before lodging of the F.I.R. which gives a version of the case which is different not only in contents but also on the time and day of the occurrence. Attention has also been drawn towards the application given by the mother of the accused in which she stated that the victim has been putting undue pressure on her so that her son is pressurized to marry her. It is further submitted that the victim refused to undergo medical examination.

5. The application for bail is opposed by learned A.G.A. However, he could not dispute a number of material facts coming up during the investigation that have been found on record.

6. The applicant is in custody since 28.4.2023 i.e. more than six months and that he has no previous criminal antecedents.

7. I considered the contents of the F.I.R., the statements given by the victim and the other witnesses, the applications given by the victim herself and by mother of the accused even before lodging of the F.I.R. as well as the period of custody, absence of any previous criminal history and all the attending facts and circumstances of the case, I find it a fit case for bail.

8. Let applicant - **Azharuddin** be released on bail in the aforesaid Case Crime Number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not temper with evidence/witnesses.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) framing of charge and (ii) recording of statement under Section 313 Cr.P.C. without exception.

9. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 16.11.2023

-Amit K-