Court No. - 36

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22677 of 2020

Applicant :- Abhishek Gaud
Opposite Party :- State of U.P.
Counsel for Applicant :- Mohd. Shoeb Khan
Counsel for Opposite Party :- G.A.

Hon'ble Ali Zamin,J.

Sri Akhilanand Mishra, Advocate has filed Parcha on behalf of the applicant and Sri Jitendra Kumar Pandey, Advocate has filed his Vakalatnama on behalf of the complainant, which are taken on record.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 554 of 2019, under Section 376D I.P.C. & Section 5/6 of POCSO Act, Police Station Shahpur, District Gorakhpur.

Learned counsel for the applicant submits that according to the FIR on 13th November, 2019 at about 6.30 p.m. in the evening applicant and co-accused enticed away the victim aged about 15 years. He further submits that before the trial court informant has not supported the prosecution case and victim has also moved an affidavit on 19.11.2020 in which she has stated that applicant- Abhishek Gaud and Vishal Kumar are innocent and they have falsely been involved by the police. There is no possibility of the applicant of fleeing away from the judicial process or tampering with the witnesses and, in case, the applicant is enlarged on bail, the applicant shall not misuse the liberty of bail. It is next contended that there is no criminal history of the applicant and he is languishing in jail since 20.11.2019.

Per contra, learned A.G.A. has opposed the bail prayer of the applicant but could not dispute the aforesaid fact.

Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties, statement of informant and affidavit of victim before the trial court and also perusing the material on record, without expressing any opinion on merit of the case, the applicant is entitled for bail, let the applicant- **Abhishek Gaud** involved in aforesaid case crime be released on bail on his furnishing a personal bond and two local sureties each of the like amount to the satisfaction of the court concerned, subject to the following

conditions :-

(i) The applicant shall file an undertaking to the effect that he will not tamper with the evidence and will not pressurize/intimidate the prosecution witnesses and will cooperate with the trial. The applicant 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.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) 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.

(iv) 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.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Order Date :- 26.11.2020
Israr