Court No. - 86

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46233 of 2020

Applicant :- Kapil And Another
Opposite Party :- State of U.P.
Counsel for Applicant :- Ch. Dil Nisar
Counsel for Opposite Party :- G.A.

Hon'ble Umesh Kumar,J.

Heard learned counsel for the applicants, learned A.G.A and gone through the record.

This bail application has been moved on behalf of accused-applicants-**Kapil and Umesh Kumar** who are involved in case crime no. 285 of 2020 under Section 376D,I.P.C, Police Station- Fatehpur District- Saharanpur.

Learned counsel for the applicant submits that applicants are innocent and have falsely been implicated in the present case; that earlier the applicants have already been granted bail vide annexure-9 by coordinate Bench of this Court under Sections 452, 376, 120B and 3/4 POCSO Act in the same crime; that now section 376D has been added; that from the statement of the victim recorded under Section 161 and 164 Cr.P.C, no case is made out against the applicants; that the victim in her affidavit, copy of which has been filed as Annexure-8 to the affidavit, has denied allegation of rape by the applicants; that the age of the applicant as determined by the medical examination is about 19 years; that the medical report also speaks that hymen is in tact and thus, allegation of rape is not made out. It is lastly contended that the accused applicant is languishing in jail since 01.06.2020 and in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial and thus, the applicant is entitled for indulgence.

Learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without touching the merits of the case in my opinion the accused applicants are entitled for bail.

Let the above mentioned applicants involved in aforesaid crime be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

1. The applicants shall not tamper with the prosecution

evidence, shall cooperate in the investigation or trial and will not indulge in any criminal activity or commission of any crime after being released on bail.

2. In case of breach of any of the conditions, it shall be a ground for cancellation of bail. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

3. However, if due to Covind-19 pandemic, the Sub-ordinate Court is under lockdown, the applicant shall be enlarged on bail on execution of personal bond without sureties till normal functioning of the courts is restored. The accused will furnish sureties to the satisfaction of the court below within a month after normal functioning of the courts are restored.

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

5. 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.

It is made clear that in the event the Sub-ordinate Court is functional as usual then the normal procedure/ mode of filing bail bonds and two sureties each in the like amount to the satisfaction of the Court concerned will be adopted.

Order Date :- 15.12.2020
Shahid