

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49527 of 2022

Applicant :- Mohd. Arif

Opposite Party :- State of U.P.

Counsel for Applicant :- Vineet Kumar Singh

Counsel for Opposite Party :- G.A., Navnath Pandey

Hon'ble Suresh Kumar Gupta, J.

List revised. Case called out twice. None appears on behalf of the first informant.

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

The applicant is involved in Case Crime No. 0164 of 2022, under Sections 452, 376 & 506 IPC and Section 67-A of the Information Technology Act, Police Station Purandarpur, District Maharajganj.

Learned counsel for applicant has submitted that the applicant is innocent and has falsely implicated in this case. Further submission is that as per allegation levelled in the FIR that the applicant on the gunpoint committed rape upon the victim on 15.12.2021. The incident took place on 15.12.2021. FIR of this case was lodged on 27.7.2022 after seven months and nine days of the incident. There is no plausible explanation regarding the delay in lodging the FIR. The husband of the victim lives in Saudi Arabia It is further submitted that when the incident took place on 15.12.2021 and husband of the victim returned in India on 5.1.2022 even then FIR of this case was not lodged by the victim. It is further submitted that false and frivolous FIR has been lodged against the applicant just to falsely implicate him. The victim is a married lady. She is a consenting party. The FIR of this case has been lodged after thought. The victim refused to herself medically examined. There are several contradictions in the statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. The applicant has no previous criminal history. The applicant is in jail since 26.7.2022. Learned counsel for the applicant has further submitted that if the applicant is released on bail, he would not misuse liberty of bail and is ready to co-operate in the trial.

Learned A.G.A. for the State vehemently opposed the prayer for

bail. It is submitted that there is no illegality in the bail rejection order, hence the applicant is not entitled for bail and the bail application is liable to be rejected.

After hearing the rival submissions of the parties, and perused the record, without expressing any opinion on merits, I find that it is a fit case for grant of bail of applicant.

Bail Application is allowed.

Let applicant (Mohd. Arif) be enlarged on bail in the aforesaid case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following additional conditions, which are being imposed in the interest of justice:-

(i) The applicant shall not tamper with the evidence of witnesses and shall not commit any offence.

(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 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.

(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.

Order Date :- 14.12.2022

Virendra