

Court No. - 85

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56790 of 2022

Applicant :- Rohit

Opposite Party :- State Of U.P And 3 Others

Counsel for Applicant :- Ratnesh Kumar Shukla, Shikhar Tandon

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth, J.

Heard learned counsel for the applicant and learned A.G.A for the State.

Learned A.G.A has informed that notice has been served.

There is allegation against the applicant of committing the offence of gang rape, sexual molestation and threat besides offence under Section 3/4 of POCSO Act and 67(B) I.T. Act.

Counsel for the applicant submits that the applicant has been falsely implicated in this case. His name is Kaluwa @ Rohit and the other person implicated in this case is Ashok. In the FIR, two persons have been implicated as Rohit and Kaluwa when they are single accused. The other accused was Sohit but name of applicant has taken twice in the statement of the victim recorded under Section 164 Cr.P.C.

Counsel for the applicant submits that the allegation of commission of gang rape in the FIR is incorrect since the victim in her statement recorded under Section 164 Cr.P.C., has stated that attempt was made to commit the offence of gang rape but she escaped and offence could not take place. It has further been stated that the screenshot was recovered from mobile phone of the co-accused, Sohit. The obscene photographs of the victim was made viral by phone number 9557056201. The investigating officer has not been able to gather any evidence as to whom the aforesaid mobile number belongs. The obscene photographs of the victim was sent on the mobile phone of co-accused, Sagar, who has also not stated anything except that the aforesaid photographs was sent on his mobile on the whatsapp group of the village boys. Counsel for the applicant also submits that the prosecution story is incorrect. No alleged offence is ever took place. The applicant is in jail since 15.11.2022 and has no criminal history to his credit. At the most offence of disrobing the victim can be alleged against him

which is a minor offence.

On the other hand learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

Let the applicant, Rohit, involved in Case Crime No. 515 of 2022, under Sections- 376 read with Section 511, 354-A, 504, 506 IPC and 9G /10 POCSO Act along with 67-B of the Information Technology Act, Police Station- Pilakhua, District- Hapur, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(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 as directed by the Court. 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.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Order Date :- 29.3.2023

Rohit