

Court No. - 67

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26503 of 2019

Applicant :- Shiu @ Shiv Prasad @ Shiv Kumar

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Kamla Singh, Vijay Shanker Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Heard Smt. Kamla Singh, learned counsel for the applicant, learned AGA and perused the record.

Contention raised at the Bar is that the applicant has been falsely implicated in the present case. It has been further submitted that the applicant -Shiu @ Shiv Prasad @ Shiv Kumar is the father of the main accused - Sintoo alias Sahil. The FIR of the alleged incident was lodged by Smt. Babita Devi, who happens to be the mother of the prosecutrix under sections 363, 366, 376, 342, 506 IPC and 3/4 of the Protection of Children from Sexual Offences Act. The text of the FIR itself reveals that the prosecutrix, aged about 15 years, left her house taking 20,000/- cash and several gold ornaments, while eloping with Sintoo alias Sahil and she stayed with him for about 25 days, thereafter she returned to her parents. There is no allegation of rape against the present applicant- Shiu @ Shiv Prasad @ Shiv Kumar. The only allegation against the applicant is that he dropped the prosecutrix at

the door of her parent's residence after the alleged incident. The case of the applicant is quite distinguishable from the case of the main accused Sintoo alias Sahil. It was lastly urged that the applicant is in jail since 03.03.2018, having no criminal antecedents to his credit.

Learned AGA opposed the prayer for bail but could not dispute the aforesaid facts and the legal submissions as argued by the learned counsel for the applicant.

Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties and without expressing any opinion on merits of the case, this Court is of the view that the applicant has made out a case for bail.

Let the applicant- Shiu @ Shiv Prasad @ Shiv Kumar, involved in Case Crime No. 33 of 2018, under sections 363, 366, 376, 342, 506 IPC and 3/4 of the Protection of Children from Sexual Offences Act, P.S. Saidpur, District Ghazipur 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 which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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 IPC.

(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., MAY BE ISSUED AND IF 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 IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court.

Order Date :- 31.7.2019

shailesh