

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10829 of 2021

Applicant :- Akash @ Asif

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Alok Singh

Counsel for Opposite Party :- G.A., Sanjay Kumar Jain

Hon'ble Shekhar Kumar Yadav, J.

Heard learned counsel for the applicant, learned AGA for the State and perused the material available on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant seeking enlargement on bail in Case Crime No.209 of 2020, under Sections 363 and 366 IPC and Section 16/17 of POCSO Act, Police Station Fatehpur Sikri, District Agra.

I have perused the prosecution story as set up in the impugned first information report and also the bail rejection order.

Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case due to ulterior motive. The incident took place on 30.09.2020 and the impugned first information report has been lodged on the same day and recovery has also been made on the same day. He further submits that the victim in her statement recorded under Section 161 Cr.P.C. has not levelled any serious allegation against the applicant. The victim has levelled the main allegation against co-accused Nitin. He further submits that the first statement of the victim was recorded under Section 161 Cr.P.C. on 02.10.2020 whereas the second statement under Section 164 Cr.P.C. was recorded on 05.10.2020. He further submits that as per medical report of the victim, she has been found 17 years and there is no internal or external injury found on the body of the victim. He further submits that applicant is having no criminal history and in case he is released on bail, he will not misuse the liberty of bail. The applicant is in jail since 25.12.2020.

On the other hand, learned A.G.A. opposes the application for bail.

Upon hearing learned counsel for the parties, perusal of record and considering the complicity of accused, severity of punishment as well as totality of facts and circumstances, at this stage without commenting on the merits of the case, I find it a fit case for bail.

Let the applicant-**Akash @ Asif**, who is involved in aforementioned case crime 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 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.

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

It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

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

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

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.

Order Date :- 30.9.2021/Ajeet