

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28572 of 2021

Applicant :- Deepak Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Manvendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

Heard Sri Manvendra Singh, learned counsel for the applicant, Sri U.P. Singh, learned counsel for the State and perused the material on record.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Deepak Kumar, seeking enlargement on bail during trial in connection with Case Crime No.244 of 2020, under Sections 354, 376, 366 I.P.C., registered at Police Station Ghazipur, District Fatehpur.

The prosecution case as per FIR lodged on 22.11.2020 under Section 354, 366 IPC against the applicant is that on 14.11.2020, the applicant allured the daughter of the first informant aged about 18 years and enticed her away and after enraging her modesty, dropped her back.

Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is further argued that the prosecutrix in her statement under Section 161 Cr.P.C. has stated that she is aged about 18 years, the applicant called her and took her to about a kilometer away, enraged her modesty and then left her and ran away after which she went to the house of the friend of her father, stayed there throughout the night and then her parents were called in the morning and she came back. In the statement recorded under Section 164 Cr.P.C., the prosecutrix has stated that she wanted to marry the applicant and was in relationship since the last 2 to 3 months. It is further stated that the applicant called her and on the said call she went with him out of her own sweet-will after which the applicant committed bad act on her and then left her and ran away. It is argued that she stated that she wanted to marry the applicant. The prosecutrix is a major girl even as per her date of birth mentioned in the high school certificate. The prosecutrix refused her medical examination externally and internally when she was produced before the doctor on 10.02.2021. The FIR has been registered after eight days of the alleged incident without any plausible explanation. The victim was a consenting party and there was some understanding between the applicant and the victim with regards to marriage as the same could not materialize and thus FIR was registered. There is no allegation of rape in the FIR and statement of the prosecutrix under Section 161 Cr.P.C. but the same has been stated in her statement under Section 164 Cr.P.C. It has also been pointed out that the applicant is not having any criminal history as stated in para 23 of the affidavit. The applicant is in jail since 18.02.2021.

Per contra learned counsel for the State opposed the prayer for bail and argued

that there is allegation of rape against the applicant in the statement of the prosecutrix recorded under Section 164 Cr.P.C., as such the prayer for bail be rejected.

After hearing the counsel for the parties and perusing the record, it is apparent that the prosecutrix is a major lady. She went with the applicant out of her own sweet-will. The factum of rape is missing in the FIR and in the statement of the prosecutrix under Section 161 Cr.P.C. which is subsequently stated in her statement under Section 164 Cr.P.C. The prosecutrix has refused her medical examination.

Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

Let the applicant-Deepak Kumar, be released on bail in the aforesaid case crime number 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. 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 I.P.C.

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

The bail application is allowed.

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.

(Samit Gopal, J.)

Order Date :- 30.9.2021

Gaurav