

Court No. - 54

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5463 of 2016

Applicant :- Rahul And Another

Opposite Party :- State Of U.P.

Counsel for Applicant :- Akhank Kumar Jain

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Misra,J.

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

The present bail application has been filed by the applicants in case crime No. 131 of 2015, under Sections 363,366, 376D I.P.C. and 3/4 POCSO Act, police station Phugana (Khera Mastan), District Muzaffarnagar with the prayer to enlarge them on bail.

The submission of the learned counsel for the applicants is that the applicants are not named in the FIR in which it is alleged that co-accused Vikki enticed away the victim. In the statement of the victim recorded under section 161 Cr.P.C., she has stated that she had known co-accused Vikki from before and that she wanted to marry him and had voluntarily gone with him. Thereafter, in her statement recorded under section 164 Cr.P.C., she has set up a completely new story that she was forcibly abducted by Ankul and Vikki and along with them, there were Rahul (applicant no. 1), Deepak (applicant no. 2) and Pankaj. She has levelled allegations of sexual assault on her as against Vikki and Ankul, no allegation of sexual assault has been levelled against Pankaj and the applicants. It has been submitted that the case of the applicants is distinguishable from that of co-accused Vikki and Ankul. It has been submitted that the applicants are innocent with no previous criminal history; they have been falsely implicated; and are in jail since 16.11.2015 and in case they are enlarged on bail, they will not misuse the liberty of bail.

Learned AGA has opposed the prayer for grant of bail to the applicants but could not point out anything material to the contrary.

Considering the facts and circumstances of the case and without commenting upon merits of the case, I am of the opinion that the applicants are entitled to be released on bail.

Let applicants **Rahul and Deepak** be released on bail in the aforesaid case crime number on their furnishing a personal bond and two reliable sureties

of 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 applicants shall not tamper with the evidence nor threaten the witnesses.

(ii) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of their absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iv) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(v) The applicants 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 them in accordance with law.

Order Date :- 25.2.2016

Arvind