

**Court No. - 64**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 48719 of 2023

**Applicant :-** Vipin

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

**Counsel for Applicant :-** Shiv Shankar Kaithal

**Counsel for Opposite Party :-** G.A.

**Hon'ble Siddharth,J.**

Learned AGA informs that he has received instructions, but notice has not been served on informant.

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

Issue notice to opposite party no. 2.

There are allegation against the applicant of abduction of a minor girl with intent to marry, commission of offence of gang-rape and offence under Section 5G/6 of POCSO Act.

Learned counsel for applicant has submitted that in the statement of victim recorded under Section 161 Cr.P.C., she has not made any allegation against the applicant. She has stated that she willingly accompanied him. As per the ossification test report the age of the victim is 17 years. Given margin of one year on higher side, she can be considered to be major. Learned counsel for applicant has submitted that after eloping with applicant, she never made by phone call to her family member and after one month, she has made a call. The applicant is languishing in jail since 26.05.2023. The applicant is enlarged on interim bail.

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 *Dataram Singh Vs. State of U.P. and another*

*reported in (2018) 3 SCC 22* and recent judgment dated 11.07.2022 of the 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.

Let the applicant, **Vipin**, involved in Session Case No. 1063 of 2023, **Case Crime No. 100 of 2023 under Sections- 363, 366, 376D IPC, and 5G/6 of POCSO Act, Police Station-Rasoolabad, District- Kanpur Dehat**, be released on interim bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned for a period of three months 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, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Put up this case on 20.12.2023 before appropriate Bench.

In failure to comply this order, the interim bail for the period of three months granted to the applicant shall stand cancelled and he shall be taken into custody forthwith.

**Order Date :- 16.11.2023**

Abhishek