

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 966 of 2023

Applicant :- Aamir

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

Counsel for Applicant :- Ravi Shankar Yadav, Mahesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.

2. Sri Brijesh Pratap Singh, learned AGA apprised the Court that notice has been served upon the informant on 05.01.2023. Despite service of notice, none present on behalf of the informant.

3. Heard Sri Mahesh Kumar Tripathi, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State.

4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 373 of 2022, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act, Police Station Akbarpur, District Kanpur Dehat during pendency of the trial.

5. FIR of the present case was lodged against applicant on 08.06.2022 under Sections 363, 366 IPC and according to the FIR applicant on 07.06.2022 at about 4.30 PM enticed away the daughter of the informant aged about 15 years and subsequently in the night at about 3.00 AM he dropped her at the home.

6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and although victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated against the applicant but as she is minor girl aged about 15 years, therefore, under pressure of her mother i.e. informant of the case she stated against the applicant.

7. He further submits that actually marriage of the sister of the applicant was solemnized in the house of the informant and on

07.06.2022 at 15.11 hours sister of the applicant namely Salma lodged FIR against husband of the informant and others under Sections 498A, 323 IPC and Section 3/4 D.P. Act at Police Station Akbarpur, District Kanpur Dehat and only due to this reason on next day FIR of the present case was lodged against the applicant, who is brother of Salma, who lodged FIR against the father of the victim.

8. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 25.11.2022 i.e. for almost a year.

9. Per contra, learned AGA opposed the prayer for bail and submitted that victim was hardly 15 years old at the time of incident and she made allegation of rape against the applicant but could not dispute the fact that sister of the applicant lodged FIR against father of the victim on 07.06.2022 under Sections 498A, 323 IPC and Section 3/4 D.P. Act as her marriage was solemnized in the house of the victim and FIR of the present case was lodged next day i.e. on 08.06.2022. He further could not dispute the fact that applicant is not having any criminal history and in the present matter he is in jail since 25.11.2022 i.e. for almost a year.

10. I have heard learned counsel for the parties and perused the record of the case.

11. Although, victim appears to be aged about 15 years at the time of incident and she made allegation of rape against applicant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but it appears that FIR of the present case was lodged on 08.06.2022 and a day prior i.e. on 07.06.2022 an FIR was lodged by sister of the applicant namely Salma against father of the victim under Section 498A, 323 IPC and Section 3/4 D.P. Act and it appears, her marriage was performed in the house of the victim, therefore, argument advanced by learned counsel for the applicant cannot be brushed aside at this stage that only due to the FIR dated 07.06.2022 next day applicant was implicated in the present matter.

12. Further, applicant is not having any criminal history and in the present matter he is in jail since 25.11.2022 i.e. for almost a year.

13. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

14. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

15. Let the applicant - **Aamir** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

16. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

17. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 28.10.2023

AK Pandey