

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7120 of 2023

Applicant :- Shiv Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ishir Sripat, Saurabh Patel

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Ishit Sripat, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 128 of 2013, under Sections 376, 394 and 506 IPC, Police Station Allau, District Mainpuri, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that initially FIR of the present case was lodged against the applicant under section 376, 394 IPC but during investigation case was converted under section 354 IPC and after recording the statement of the victim i.e. wife of the informant charge sheet was also filed against the applicant only under section 354 IPC.

4. He further submitted that as in spite of the repeated requests made by the then Investigating Officer, victim of the case i.e. wife of the informant did not appear for her statement under section 164 Cr.P.C., therefore, at that time, her statement under section 164 Cr.P.C. could not be recorded.

5. He further submitted that subsequently when one another Investigating Officer perused the records and found that without recording the statement of the victim under section 164 Cr.P.C., charge sheet was filed under section 354 IPC then he started further investigation on 10.6.2014 and during further investigation, statement of the victim under section 164 Cr.P.C. was recorded on 13.6.2014 and in the subsequent statement recorded under section 164 Cr.P.C. victim started making allegation of rape against the applicant.

6. He further submitted that admittedly victim is major and

married lady and initially in her statement recorded under section 161 Cr.P.C. during first investigation she did not make any allegation of rape against the applicant, therefore, it appears that subsequently, she made false allegation of rape against the applicant in her statement recorded under section 164 Cr.P.C. during further investigation which was recorded after more than a year.

7. He further submitted that in the present case for offence under section 354 IPC, applicant had already been released on bail and his bail order for the offence under section 354 IPC has been annexed as annexure-10 to the affidavit.

8. He further submitted that however on the basis of the statement recorded under section 164 Cr.P.C. dated 13.6.2014 applicant was made accused for the offence under section 376 IPC but his remand could only be taken under section 376 IPC on 6.9.2021 and since then he is in jail in the present matter i.e. for last more than two years.

9. He further submitted that actually in connection with another case under section 376 IPC applicant was detained in jail in Delhi and therefore, earlier his remand could not be made for offence under section 376 IPC.

10. He further submitted that although applicant is having criminal history of four cases but his criminal history has been explained in paragraph-26 to the affidavit and out of four cases in three cases he is on bail and in one case under section 376 IPC he has been convicted.

11. He further submitted that however applicant is a previous convict but considering the evidence collected by the Investigating Officer against him in the present matter and coupled with the fact that applicant is in jail in the present matter for last more than 2 years, he may be released on bail.

12. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

14. However, from the record it reflects that apart from the present case applicant is also having criminal history of four other cases

but his criminal history has been explained in para-2 to the affidavit filed in support of the instant bail applicant and out of four cases in three cases, he has been released on bail and trial of these cases are still pending.

15. However, in one case under section 376 IPC, applicant has already been convicted, therefore, it appears that applicant is a previous convict but from the record of the present case it reflects that initially when applicant was arrested in the present matter then he was challenged for offence under section 354 IPC and at that time he was released on bail (see annexure-10) and it appears that after about a year during further investigation, statement of the victim was recorded under section 164 Cr.P.C. as earlier during the first investigation her statement under section 164 Cr.P.C. could not be recorded and when her statement under section 164 Cr.P.C. was recorded during further investigation then victim stated that applicant committed rape upon her and therefore, there are material contradictions in both the statements of the victim recorded under sections 161 and 164 Cr.P.C.

16. Further, from the record, it reflects that applicant is in jail since 6.9.2021 i.e. for last more than two years.

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

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

19. Let the applicant-**Shiv Kumar**, 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.

20. 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.

21. 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 :- 13.12.2023

Ankita