

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6933 of 2023

Applicant :- Umesh

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

Counsel for Applicant :- Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.,Rajesh Kumar

Hon'ble Sameer Jain,J.

1. None appeared on behalf of the informant even in the revised call. Learned AGA for the State-respondent is present.
2. Heard Sri Vijay Prakash Chaturvedi, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 368 of 2022, under Sections 376-DA, 506 IPC and Section 5/6 POCSO Act, Police Station Bansi, District Siddharth Nagar, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and co-accused Aleem and one unknown person and according to the FIR on 10.12.2022 co-accused Aleem called the daughter of the informant aged about 17 years and when she on his call went then applicant and Aleem and one unknown person committed rape upon her.
5. It is further mentioned in the FIR that on search, informant found her daughter in nude condition in the filed.
6. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and baseless and actually applicant is servant of co-accused Aleem and only due this reason he has been made accused in this case.
7. He further submitted that as per school record, however, victim at the time of incident was 16 years old but according to the CMO concerned her radiological age was 19 years and therefore, it appears that she was major.

8. He further submitted that victim was having affair with co-accused Aleem but when this fact revealed to her parents then FIR of the present case was lodged and only being servant of the co-accused Aleem, applicant has been made accused in the present matter.

9. He further submitted that even co-accused Aleem has been released on bail by the co-ordinate Bench of this Court vide order dated 17.3.2023 passed in Crl. Misc. Bail Application No. 5061 of 2023.

10. He further submitted that co-accused Rakesh against whom victim in her both the statements recorded during investigation made allegation of rape has already been enlarged on bail by co-ordinate Bench of this Court vide order dated 11.4.2023 passed in Crl. Misc. Bail Application No. 15028 of 2023.

11. He placed both the bail orders during the course of argument, which is taken on record and collectively marked as 'A'.

12. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 11.12.2022 i.e. for last one year.

13. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that co-accused Rakesh and Aleem have already been released on bail and case of applicant is at par with them and applicant is in jail for last one year.

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

15. However, victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against applicant and two others but story narrated by her does not appear to be convincing and considering the fact that applicant is the servant of co-accused Aleem, defence taken by the applicant, cannot be brushed aside, at this stage.

16. Further, bail application of co-accused Aleem has been allowed by the co-ordinate bench of this Court after considering the entire facts of the case and thereafter bail application of co-accused Rakesh was also allowed by this Court and in the light of the statements of the victim recorded under sections 161 and 164 Cr.P.C. case of applicant is also at par with them.

17. Further, applicant is having no criminal history and he is in jail in the present matter since 11.12.2022 i.e. for last one year.

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

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

20. Let the applicant-**Umesh**, 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.

21. 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.

22. 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 :- 11.12.2023

Ankita