

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7215 of 2019

Applicant :- Suraj

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Lal, Manvendra Narain Pathak, Mohammad Khalid

Counsel for Opposite Party :- G.A., Sanjeev Kumar Asthana

Hon'ble Sameer Jain, J.

1. Heard Sri Shivam Yadav, learned counsel for the applicant, Sri Sanjeev Kumar Asthana, learned counsel for the informant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 259 of 2018, under Sections 363, 366, 376-D, 506 IPC & 5/6 POCSO Act, Police Station-Meja, District- Allahabad, during pendency of the trial in the court below.
3. FIR of the present case was lodged against unknown person and according to the FIR, daughter of the informant aged about 14 years has missed somewhere from her house in the night of 24.05.2018 while she was sleeping outside of her home.
4. Learned counsel for the applicant submitted that nobody was named in the FIR and even when the statement of the victim was recorded under Section 161 Cr.P.C. then she also did not disclose the name of anyone and stated that on 24.05.2018, she alone left her house and when on 01.06.2018, she was returning back to her home, police apprehended her but when her statement was recorded under Section 164 Cr.P.C. then she made allegation of gang rape against the applicant and three others and, therefore, there are material contradictions in both the statements of the victim.
5. He further submitted that bail applications of three accused persons namely Ram Chandra, Dharmendra Kumar and Rakesh have already been allowed by this Bench. He placed the bail orders of all the three accused persons during the course of argument, which are taken on record and collectively marked as 'A'. He

further submitted that case of applicant is at par with them.

6. He further submitted that applicant is not having any criminal history and he is in jail since 07.07.2018 i.e. for more than five years.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim was hardly 14 years' old at the time of incident but could not dispute the other argument on facts advanced by learned counsel for the applicant.

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

9. However, from the record, it reflects that victim was around 14 years' old at the time of incident but in her statement recorded under Section 161 Cr.P.C., she did not make any allegation against anyone and simply stated that on 24.05.2018 she on her own had left her house and on 01.06.2018 when she was returning back then on the way she was apprehended by the police but in her statement recorded under Section 164 Cr.P.C. she changed her earlier version and stated that applicant and three others committed rape with her and, therefore, there are material contradictions in both the statements of the victim.

10. Further, in the statement recorded under Section 164 Cr.P.C. she made allegation of rape against the applicant and three others and bail applications of all the other three accused persons have been granted by this Bench and case of applicant is at par with them.

11. Further, applicant is not having any criminal history and he is in jail since 07.07.2018 i.e. for more than five years.

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

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

14. Let the applicant- **Suraj** 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.

15. 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.

16. 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 :- 3.11.2023

KK Patel