

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7983 of 2023

Applicant :- Abid

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

Counsel for Applicant :- Ashok Kumar Singh

Bais,A.Z.Khan,Pankaj Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent apprise the Court that notice has been served to the informant on 15.02.2023. Even from the order dated 20.02.2023, it appears that notice has already been served to the informant. Despite service of notice, none appeared on behalf of the informant.

2. Heard Shri A. Z. Khan, learned counsel for the applicant and Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.280 of 2022, under Sections 363, 376, 323, 504, 506 IPC & Sections 3/4 POCSO Act, Police Station Kotwali Mandi, District Saharanpur, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 12.09.2022 against applicant and three others and according to the FIR, on 07.07.2022 applicant committed rape upon the daughter of the informant aged about fifteen years.

5. Learned counsel for the applicant submits that applicant is innocent and on the basis of false allegation of rape, he has been made accused in the present matter.

6. He further submits that as per prosecution rape was committed on 07.07.2022 but in spite of that FIR of the present case was lodged on 12.09.2022 i.e. after more than two months of the incident and this inordinate delay in lodging the FIR itself shows that allegation of rape made against the applicant is totally false.

7. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 19.09.2022 i.e. for last more than a year.

8. Per contra, learned AGA opposed the prayer for bail and submits that victim is hardly fifteen years old girl and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 and 164 Cr.P.C. but could not dispute the fact that FIR of the present case was lodged after more than two months of the incident and applicant is in jail for last more than a year.

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

10. However, victim of the case is hardly fifteen years old girl and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but according to her, rape was committed by the applicant on 07.07.2022 and same day, she informed this fact to her parents but in spite of that FIR of the present case was lodged on 12.09.2022 i.e. after more than two months of the incident and therefore there is inordinate delay in lodging the FIR.

11. Further, applicant is not having any criminal history and he is in jail in the present matter since 19.09.2022 i.e. for last more than a year.

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- **Abid**, 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 :- 8.12.2023

Zafar