

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8211 of 2023

Applicant :- Furkan

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

Counsel for Applicant :- Rajesh Kumar Mishra, Geetam Singh, Jitendra Kumar Pandey

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 Pradeep Kumar, learned AGA for the State apprised the Court that notice has been served upon the informant on 17.02.2023. Despite service of notice, none present on behalf of the informant.
3. Heard Sri Geetam Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.
4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 66 of 2022, under Sections 452, 376D, 120B, 323, 506 IPC and Section 3/4 POCSO Act, Police Station Milak, District Rampur during pendency of the trial.
5. FIR of the present case was lodged on 06.03.2022 against applicant and five others through an application under Section 156(3) Cr.P.C. and in the FIR general allegations of rape have been leveled by the victim i.e. informant of the case against number of accused persons including her father and in the FIR it is mentioned that when her father sold her to co-accused Usman then co-accused Usman called co-accused Imran, Munne and applicant for the purpose to commit rape with her. It is further mentioned in the FIR that on 30.01.2022 applicant and other accused persons committed rape with her after entering in her matrimonial home.
6. Learned counsel for the applicant submitted that although in the FIR and in the statements of the prosecution witnesses including victim recorded during investigation, there was allegation of rape

against the applicant but when victim appeared before the trial court then she did not support the prosecution case and has been declared hostile. He further submits that there was also allegation of rape against two other accused persons, namely Munne and Usman and both have been released on bail. He further submits that case of applicant is at par with them. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 29.07.2022 i.e. for more than a year.

7. Per contra, learned AGA opposed the prayer for bail but could not dispute the 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. Considering the fact that during trial victim of the case has been declared hostile and two other accused persons have been released on bail and case of applicant is at par with them, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant - **Furkan** 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.

12. 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.

13. 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 :- 7.11.2023

AK Pandey