

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12817 of 2022

Applicant :- Indal

Opposite Party :- State of U.P.

Counsel for Applicant :- Rama Shankar Mishra, Sunil Kumar Dwivedi

Counsel for Opposite Party :- G.A., Manoj Kumar Mishra

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in revised call, however, learned AGA for the State is present.
2. Heard Sri Rama Shankar Mishra, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 429 of 2021, under Sections 328, 343, 376-D, 323, 506 IPC, Police Station- Bhoganipur, District- Kanpur Dehat, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 11.09.2021 against applicant and three others and according to the FIR, victim i.e. informant of the case was married lady and her husband tortured her and, therefore, she came close to the applicant and on 22.06.2021, applicant enticed her along with her children and has taken her to Kanpur where he entire night committed rape upon her by administering some intoxicating substance to her.
5. It is further mentioned in the FIR that applicant detained the victim for 14-15 days and continuously sexually exploited her. It is further mentioned in the FIR that when victim any how got free from the confinement of the applicant then on the way co-accused Akhilesh met her and he has taken her to the house of his friend where co-accused Akhilesh and Swatantra also committed rape upon her.
6. Learned counsel for the applicant submitted that entire story narrated by the victim appears to be false and baseless and no

reliance can be placed on such hypothetical version. He further submitted that as per the victim, in June, 2021 rape was committed upon her but in spite of that FIR was lodged on 11.09.2021 i.e. after three months.

7. He further submitted that admittedly victim i.e. informant of the case was major and married lady and after dispute with her husband she developed relationship with the applicant and it appears, subsequently some dispute arose between both of them and thereafter applicant has been made accused in the present matter.

8. He further submitted that applicant is not having any criminal history and he is in jail since 03.12.2021 i.e. for last more than two years.

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

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

11. However, informant i.e. victim of the case made allegation of rape against applicant and others in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but FIR of the present case was lodged after three months and even story narrated by the victim appears to be quite improbable and no reliance can be placed on such version.

12. Further, bail application of co-accused Swatantra has been allowed by co-ordinate Bench of this Court and as far as allegation of rape is concerned, case of applicant is at par with him.

13. Further, during the course of argument learned AGA however, pointed out that applicant is also having criminal history of one case of Gangsters Act but he fairly conceded that on the basis of present case, he was made accused under the provisions of Gangsters Act.

14. Further, applicant is not having any criminal history and he is in jail since 03.12.2021 i.e. for last more than two years.

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

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

17. Let the applicant- **Indal** 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.

18. 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.

19. 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 :- 14.12.2023

KK Patel