

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15432 of 2023

Applicant :- Shoeb

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

Counsel for Applicant :- Mohammad Fateh, Amit Kumar, Bhanu Pratap Pal, Vinod Kumar Tirpathi

Counsel for Opposite Party :- G.A., Rajesh K.S. Chaudhary

Hon'ble Sameer Jain, J.

1. Heard Sri Vinod Kumar Tripathi, learned counsel for the applicant, Sri Rajesh K.S. Chaudhary, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 285 of 2022, under Sections 363, 376D, 342, 323, 34, 354-D, 504, 506 IPC, Section 5/6 POCSO Act and Section 3(2)(5) SC/ST Act, Police Station Kasna, District Gautam Budh Nagar during pendency of the trial.
3. FIR of the present case was lodged on 17.12.2022 against applicant and others and according to the FIR applicant and nominated accused persons committed rape with cousin sister of the informant aged about 15 years on 16.12.2022 between 4-5 PM in the evening.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and this fact is evident from the statement of the victim recorded under Section 161 Cr.P.C. He further submits that however, victim in her statement recorded under Section 164 Cr.P.C. repeated the version of the FIR. He further submits that there are material contradictions in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., therefore, no reliance can be placed on such witness and it appears that applicant has been falsely implicated in the present matter.
5. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 18.12.2022 i.e. almost a year.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record at the time of incident victim was about 15 years old and she in her statement recorded under Section 164 Cr.P.C. categorically stated that applicant on 16.12.2022 along with other co-accused persons committed gang rape upon her and in her statement recorded under Section 161 Cr.P.C. victim stated that earlier also applicant had taken her in a hotel and made physical relationship with her but both the counsels could not dispute the fact that with regard to incident dated 16.12.2022 victim did not make any allegation of rape in her statement recorded under Section 161 Cr.P.C., therefore, there are material contradictions in her both the statements.

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

8. However, in the FIR as well as in the statement of the victim recorded under Section 164 Cr.P.C. there are allegation of rape against the applicant and as per allegation of 16.12.2023 applicant along with two other committed gang rape upon the victim aged about 14 years (according to her school record), but from perusal of her earlier statement recorded under Section 161 Cr.P.C. it reflects that she categorically stated before the Investigating Officer that applicant was her friend and she went in his room and applicant did not do anything, however, she in that statement stated that earlier applicant had taken her in a hotel and made physical relationship with her, therefore, I find force in the argument advanced by learned counsel for the applicant that there are material contradictions in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

9. Further, applicant is not having any criminal history and in the present matter he is in jail since 18.12.2022 i.e. almost a year.

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

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

12. Let the applicant - **Shoeb** 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.

13. 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.

14. 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 :- 2.12.2023

AK Pandey