

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17710 of 2022

Applicant :- Sandeep Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Naveen Kumar Yadav, Jagadish Prasad Yadav, Kunwar Abhishek Singh, Pradeep Kumar Tiwari, Sudhir Kumar Agarwal, Sumit Kumar Srivastava, Suresh Pratap Singh

Counsel for Opposite Party :- G.A., Pradeep Kumar

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri J.P. Yadav, learned counsel for the applicant, Sri Pradeep Kumar, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 03 of 2019, under Sections 419, 420, 342, 376, 312, 506 IPC, Police Station Kapilvastu, District Siddharth Nagar during pendency of the trial.
4. FIR of the present case was lodged against applicant and three others on 18.01.2019 and according to the FIR on 04.10.2017 applicant committed rape upon the informant and thereafter when she conceived then caused her miscarriage.
5. It is further mentioned in the FIR that after the illness of the brother of the informant applicant performed marriage with the informant and after marriage when she conceived then applicant and his family members also tried to cause her miscarriage.
6. It is further mentioned in the FIR that subsequently informant came to know that applicant has already a married man and he by duping the informant performed marriage with her.
7. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and admittedly informant i.e. victim of the case is a major girl and she was well

aware with the fact that applicant is already a married man but on her insistence her marriage was performed with the applicant but unfortunately after marriage some dispute arose between applicant and informant and thereafter FIR of the present case was lodged.

8. He further submits that FIR of the present case was lodged after more than a year and this fact itself shows that on the basis of false allegation applicant has been made accused in the present matter. He further submits that even from the FIR as well as from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. her consent is quite apparent.

9. He next submits that during pendency of instant bail application, applicant was released on interim bail on 23.01.2023 for the purpose to settle the dispute with the informant but unfortunately in spite of best effort of the applicant, the dispute between both of them could not be resolved and even before expiry of the period of interim bail, applicant surrendered before the court concerned on 03.07.2023 and since then he is in jail.

10. He next submits that however, applicant is having previous criminal history of one case relates to Section 325, 504, 506 IPC but his criminal history has been explained in the rejoinder affidavit and this case was lodged by the brother of the informant against the applicant only due to pending dispute.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that it is a case in which applicant by concealing the fact that he has already a married man solemnized marriage with the informant, therefore, he duped the informant and spoiled her life but they could not dispute the fact that informant is major lady and FIR of the present case was lodged after more than a year.

12. They further could not dispute the fact that during pendency of the instant bail application, applicant was released on interim bail and he did not misuse the liberty of interim bail granted to him.

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

14. However, in the FIR and in both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. there is allegation that applicant by concealing the fact that he is already a married man solemnized marriage with the informant and it is also alleged that earlier also applicant committed rape upon her but

victim i.e. informant of the case admittedly is major lady and FIR of the present case was lodged after more than a year.

15. Further, even from the FIR and from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. it cannot be said that she was not the consenting party.

16. Further, during pendency of instant bail application, applicant was released on interim bail by the co-ordinate Bench of this Court on 23.01.2023 to settle his score with the informant but it appears that the dispute between both sides could not be resolved, however, applicant during release on interim bail did not misuse the liberty of interim bail granted to him.

17. Further, although applicant is having criminal history of one another case of Sections 325, 504, 506 IPC but criminal history of the applicant has been explained in the rejoinder affidavit and it appears that it is a case which was lodged against the applicant by the brother of the victim of the present case.

18. Further, applicant after surrender is in jail in the present matter since 03.07.2023 and earlier also he was in jail from 23.02.2022.

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

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

21. Let the applicant - **Sandeep Yadav** 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.

22. 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.

23. 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 :- 6.12.2023

AK Pandey