

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14990 of 2023

Applicant :- Kalam

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

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A.,Ganesh Shanker Srivastava

Hon'ble Sameer Jain,J.

1. None appeared on behalf of the informant even in the revised call. However, learned AGA for the State-respondent is present.
2. Heard Sri B.B. Singh Advocate holding brief of Sri Jitendra Singh, learned counsel for the applicant and Dr. S. B. Singh, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 155 of 2022, under Sections 363, 366-A, 376 IPC & 5/6 POCSO Act, Police Station Chilhiya, District Siddharth Nagar, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and according to the FIR, applicant has enticed away the daughter of the informant aged about 18 years.
5. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and victim in her statement recorded under section 161 Cr.P.C. stated that she according to her own wish had gone alongwith the applicant and she is also going to deliver a child from the applicant and in the statement recorded under section 164 Cr.P.C. also she stated that she loved the applicant but she further stated that applicant duped her and he was already married.
6. He further submitted that now the victim has appeared before the trial court and before trial court when she was examined then she did not support the prosecution case and she has been declared hostile.
7. He further submitted that his statement recorded by the trial

court has been annexed alongwith the rejoinder affidavit.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 23.10.2022 i.e. for almost a year, therefore, he may be released on bail.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that during trial victim did not support the prosecution case and has been declared hostile.

10. He further could not dispute the fact that before trial court, she categorically stated that under the influence of her parents, she stated against the applicant in her statement recorded under section 164 Cr.P.C.

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

12. Although, from the perusal of the record, it reflects that victim in her statement recorded under section 164 Cr.P.C. stated that applicant duped her and in the statement recorded under section 161 Cr.P.C. she stated that with her consent physical relationships were developed between her and applicant and she is also going to deliver a child from the applicant but when she appeared before the trial court as PW-2 on 7.8.2023 then she did not support her earlier version and has been declared hostile and from her statement recorded by the trial court which has been annexed alongwith the rejoinder affidavit, it appears that she categorically stated that applicant did not make physical relationship with her and also stated that under the pressure of her parents she gave the statement under section 164 Cr.P.C.

13. Further applicant is not having any criminal history and he is in jail in the present matter since 23.10.2022 i.e. for almost a year.

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

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

16. Let the applicant-**Kalam**, 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.

17. 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.

18. 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 :- 18.10.2023

Ankita