

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 16265 of 2023

Applicant :- Bheem Chauhan

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

Counsel for Applicant :- Ashutosh Kumar Pandey

Counsel for Opposite Party :- G.A.,Sunita Chauhan

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Ashutosh Kumar Pandey, learned counsel for the applicant, Sri S.K. Tiwari, Advocate, holding brief of Smt. Sunita Chauhan, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 04 of 2023, under Sections 363, 376, 323, 504 IPC & 3/4 POCSO Act, Police Station- Mugalsarai, District- Chandauli, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and his family members and according to the FIR, on 02.01.2023 at about 6:00 p.m. in the evening daughter of the informant had gone to the shop but did not return and on 03.01.2023 when informant made inquiry from the applicant then from his house her daughter was found and she informed the informant that applicant committed rape upon her. It is further mentioned in the FIR that date of birth of the victim is 29.03.2008.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and however, during investigation, victim and informant both made allegation of rape against the applicant but when both appeared before the trial court then they did not support the prosecution case and have been declared hostile and their statements recorded by the trial court have been annexed alongwith the supplementary affidavit.

6. He further submitted that applicant is not having any criminal history and he is in jail since 08.01.2023 i.e. for last almost 11 months.
7. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly 15 years' old and during investigation, she made allegation of rape against the applicant but could not dispute the fact that victim and her mother i.e. informant of the case when appeared before the trial court then both have declared hostile.
8. Learned counsel for the informant also conceded the fact that victim and informant both when appeared before the trial court then they have declared hostile and both are having no objection if applicant be enlarged on bail.
9. I have heard learned counsel for the parties and perused the record of the case.
10. Considering the fact that informant i.e. mother of the victim and victim both when appeared before the trial court then they did not support the prosecution case and have been declared hostile and neither informant nor victim is having any objection if applicant be enlarged on bail and applicant is in jail for last almost 11 months, 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- **Bheem Chauhan** 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 :- 1.12.2023

KK Patel