

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 18842 of 2023

Applicant :- Aasif

Opposite Party :- State of U.P.

Counsel for Applicant :- Prakash Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Manoj Pandey, Advocate, holding brief of Sri Prakash Tripathi, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 46 of 2022, under Sections 498-A, 376, 323, 504, 506 IPC & 3/4 D.P. Act, Police Station- Bhagatpur, District- Moradabad, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 19.02.2022 against applicant and his family members including his brother i.e. husband of the informant and according to the FIR, marriage of the informant was performed with the elder brother of the applicant on 28.09.2020 and after marriage, applicant and his family members tortured her for demand of dowry and husband used to commit sodomy with her under intoxication. It is further mentioned in the FIR that on 09.02.2022, applicant committed rape upon his *bhabhi* i.e. informant and when she made complaint with other family members then they turned her out from her matrimonial home.

4. Learned counsel for the applicant submitted that applicant is the *devar* of the informant i.e. victim of the case and on the basis of false allegation of rape, he has been made accused in the present matter. He further submitted that even from the FIR, it reflects that matrimonial dispute between husband and wife was going on and it appears, being younger brother of the husband, applicant has been made accused in present matter.

5. He further submitted that as per the allegation, rape was committed by the applicant on 09.02.2022 but in spite of that FIR was lodged on 19.02.2022 i.e. after 10 days. He further submitted

that story narrated by the informant i.e. *bhabhi* of the applicant appears to be quite improbable and no reliance can be placed on such version.

6. He further submitted that applicant is not having any criminal history and he is in jail since 21.02.2022 i.e. for last more than one and half years.

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

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

9. Considering the fact that applicant is the *devar* of the informant i.e. victim of the case and FIR was lodged after 10 days and matrimonial dispute is apparent even from the FIR and story narrated by the informant appears to be unconvincing and applicant is in jail for last more than one and half years, in my view applicant is entitled to be released on bail.

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

11. Let the applicant- **Aasif** 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.

12. 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.

13. 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 :- 7.12.2023
KK Patel