

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19469 of 2023

Applicant :- Surya Bhan

Opposite Party :- State of U.P.

Counsel for Applicant :- Hanuman Deen Verma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Hanuman Deen Verma, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 71 of 2020, under Sections 376, 323, 504, 506 IPC, Police Station- Geeda, District-Gorakhpur, during pendency of the trial in the court below.

3. Learned counsel for the applicant submitted that this is the third bail application filed on behalf of the applicant however, his first bail application was dismissed in default and his second bail applicant was dismissed on merit by this Court on 18.08.2022 and he is pressing the instant third bail application on the ground that applicant is in jail in the present matter since 12.03.2020 i.e. for last more than three and half years and till date, trial of the case could not be concluded and at the time of first bail application, statements of the independent witnesses could not be placed before this Court and in their statements they categorically stated that applicant and victim were having love affair. He further submitted that except the report of CMO concerned, there is no other evidence on record with regard to age of the victim and according to the CMO concerned, victim was 18 years' old at the time of incident, therefore, she was major. He further submitted that even initially FIR of the present case was lodged under Section 376-D IPC against applicant and others for gang rape but during investigation, involvement of other accuse persons were found false and charge sheet was filed only against applicant under Sections 376, 504, 506 IPC. He further submitted that applicant is not having any criminal history.

4. Per contra, learned AGA opposed the prayer for bail and

submitted that this is the third bail application filed on behalf of the applicant and his second bail application was dismissed on merit after considering the entire facts of the case but could not dispute the fact that from the record, it reflects that victim was major girl aged about 18 years and from the statements of the independent witnesses annexed alongwith the instant third bail application, it reflects that victim and applicant were having love affair and their statements could not be placed before this Court at time time of the second bail application. He further could not dispute the fact that applicant is in jail for more than three and half years.

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

6. However, this is the third bail application field on behalf of the applicant and his first bail application was dismissed in default and his second bail application was dismissed on merit by this Court but from the perusal of the bail order dated 18.08.2022 passed by this Court in the second bail application of the applicant, it appears that the statements of independent witnesses, which were villagers, could not be placed before this Court at the time of hearing of the second bail application and from perusal of their statements (Annexure No. 6), it reflects that applicant and victim were having love affair.

7. Further, from the report of CMO concerned, age of the victim was 18 years and except the report of CMO, it appears that there is no other evidence with regard to the age of the victim.

8. Further, applicant is not having any criminal history and he is in jail since 12.03.2020 i.e. for last more than three and half years.

9. Therefore, considering the facts and circumstances of the case discussed above, 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 third bail application is **allowed**.

11. Let the applicant- Surya Bhan 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 :- 2.12.2023

KK Patel