

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19297 of 2023

Applicant :- Arjun @ Anuj

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Ram Murat,Rajesh Yadav,Rateesh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Rajesh Yadav, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 768 of 2022, under Sections 376, 506 IPC, Police Station- Kotwali Nagar, District- Muzaffar Nagar, during pendency of the trial in the court below.
4. FIR of the present case was lodged against co-accused Ramchail and according to the FIR, nominated accused Ramchail, for last three years, was continuously sexually exploiting the sister-in-law (sali) of the informant and due to his sexual exploitation, she also became pregnant.
5. Learned counsel for the applicant submitted that applicant was not named in the FIR and when the statement of the victim was recorded under Section 161 Cr.P.C. then she also introduced three other persons including applicant alongwith co-accused Ramchail, who was nominated in the FIR. He further submitted that both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. do not appear to be convincing and no reliance can be placed on such version.
6. He further submitted that however, there is allegation that co-accused Shahrukh and Chhotu also committed rape upon the victim but both have been released on bail by different co-ordinate Benches of this Court and their bail orders have been annexed alongwith the supplementary affidavit filed in support the instant bail application and case of applicant is at par with them.

7. He further submitted that applicant is not having any criminal history and he is in jail since 29.12.2022 i.e. for last almost a year.

8. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that co-accused Shahrukh and Chhotu have been released on bail by different co-ordinate Benches of this Court and case of applicant is at par with them. He further could not dispute the fact that applicant is in jail in the present matter since 29.12.2022 i.e. for last almost a year.

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

10. However, victim in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. stated that applicant and three others committed rape upon her but she made allegation of rape against different persons on different dates, therefore, story narrated by the victim appears to be quite improbable at this stage.

11. Further, in both the statements of the victim recorded during investigation, there was also allegation of rape against co-accused Shahrukh and Chhotu and both have been enlarged on bail and case of applicant is at par with them.

12. Further, applicant is not having any criminal history and he is in jail since 29.12.2022 i.e. for last almost a year.

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

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

15. Let the applicant- **Arjun @ Anuj** 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.

16. 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.

17. 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