

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19563 of 2023

Applicant :- Rahul Bharti

Opposite Party :- State of U.P.

Counsel for Applicant :- Shikhar Tandon, Harshit Mishra, Ritesh Singh, Suresh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Suresh Singh, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 551 of 2022, under Sections 366 and 376D IPC, Police Station Kotwali, District Shahjahanpur during pendency of the trial.
3. FIR of the present case was lodged against unknown persons and according to the FIR daughter of the informant aged about 17 years had gone somewhere from the house of her Bua.
4. Learned counsel for the applicant submitted that applicant was not named in the FIR and during investigation when the statement of the victim was recorded under Section 161 Cr.P.C. then he along with co-accused Prem Kumar was made accused in the present matter.
5. He further submits that actually victim of the case was having affair with co-accused Prem Kumar and she had already performed marriage with him even in the month of September, 2022 and applicant unnecessarily was made accused in the present matter along with co-accused Prem Kumar.
6. He further submits that co-accused Prem Kumar was detained under the provisions of SC/ST Act and when his bail was dismissed by the court concerned then he preferred Criminal Appeal No. 7195 of 2023 before this Court and on 09.08.2023 this Court allowed the criminal appeal filed by co-accused Prem Kumar after setting aside the bail rejection order and released the co-accused Prem Kumar on bail.

7. He further submits that case of applicant is even on better footing than co-accused Prem Kumar. He produced the order passed by this Court in Criminal Appeal No. 7195 of 2023 during the course of argument, which is taken on record and marked as 'A'. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 19.10.2022 i.e. for last more than a year.

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

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

10. However, applicant was not named in the FIR but victim in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant and co-accused Prem Kumar forcibly committed rape upon her but co-accused Prem Kumar has already been released on bail by this Court in criminal appeal filed by him and case of applicant is even at better footing than co-accused Prem Kumar.

11. The Apex Court in the case of **Satender Kumar Antil Vs. CBI & another (2022) 10 SCC 51** in paragraph no. 98 has observed that:-

"Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

12. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 19.10.2022 i.e. for last more than 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 - **Rahul Bharti** 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 :- 14.12.2023

AK Pandey