

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 20424 of 2023

Applicant :- Rajesh Kumar Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhilasha Singh, Ashutosh Yadav, Shyam Lal

Counsel for Opposite Party :- G.A., Anurag Vajpeyi, Praveen Kumar Singh

Hon'ble Sameer Jain, J.

1. Counter affidavit filed today on behalf of the State is taken on record.
2. Heard Ms. Abhilasha Singh, learned counsel for the applicant; Sri Praveen Kumar Singh, 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. 383 of 2021, under Sections 452, 354, 354-Kha, 323, 504, 506 & 376-D IPC, Police Station Rohaniya, District Varanasi, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 4.8.2021 through an application moved under section 156(3) Cr.P.C. dated 13.7.2021 and according to the FIR applicant and other accused persons who are collateral of the informant on 6.7.2021 at 4:30 pm after entering in her house outraged her modesty and also made assault upon her.
5. Learned counsel for the applicant submitted that the applicant is innocent and on the basis of false allegation he has been made accused in the present matter.
6. She further submitted that victim at different stages changes her statement and in the FIR she only made allegation of outraging her modesty against the applicant and others but in the statement under section 161 Cr.P.C. she stated that applicant and co-accused Annu tried to insert their fingers in her vagina and in her statement under section 164 Cr.P.C. she stated that they have inserted their fingers in her vagina and thus committed rape upon her and this fact suggests that victim is

not reliable witness.

7. She further submitted that actually victim and applicant are collaterals and a long standing enmity is pending between them with regard to the property and this fact has been averred in paragraph-25 of the affidavit filed in support of the instant bail application and only due to that property dispute applicant has been made accused in the present matter alongwith his father Vidya Chandra.

8. She further submitted that however FIR of the present case was lodged in the year 2021 and applicant could only be appeared on 9.2.2023 i.e. after more than one and half years but applicant was not an absconder and till February, 2022 he was availing legal remedy but as informant was his collateral therefore, some efforts were being made by the members of the family to resolve the dispute and therefore, he after February, 2022 could not appear before the court concerned and in the meantime coercive measures have been taken against him and when he came to know about the fact that coercive measures have been taken against him then he appeared before the court concerned in the Month of February, 2023.

9. She further submits, however applicant is having criminal history of three cases but all the three cases were of minor offence and the same has been explained in para-27 of the affidavit.

10. He further submitted that applicant is in jail in the present matter since 9.2.2023 i.e. for last more than ten months.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim however only for the first time under section 164 Cr.P.C. stated that applicant and other co-accused committed rape upon her by inserting their finger in her vagina but earlier also she clearly stated that they tried to commit rape upon her and therefore, it cannot be said that there are material contradictions in the statements of the victim.

12. However, they could not dispute the fact that FIR of the present case was lodged after more than a month through an application under section 156(3) Cr.P.C. and application under section 156(3) Cr.P.C. was moved after seven days.

13. Learned counsel for the informant further submitted that as after issue of the process under section 83 Cr.P.C. applicant appeared before the court concerned therefore, he is an absconder but he further could not dispute the fact that

applicant in the supplementary affidavit explained the fact that why he appeared so belatedly before the trial court and he further could not dispute the fact that applicant and victim both were collateral and enmity with regard to the property is pending between both the parties.

14. He further could not dispute the fact that applicant is in jail in the present matter for last more than ten months.

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

16. However, from the perusal of the record, it appears that applicant appeared before court concerned after more than one and half year and in the meantime process under section 83 Cr.P.C. was also issued against him but from the supplementary affidavit filed in support of the instant bail application dated 4.7.2023 it reflects that up to February, 2022, applicant was availing legal remedies and thereafter however, he could not appear before court concerned but argument advanced by learned counsel for the applicant that as applicant and victim both were collaterals and attempt to compromise the matter was being made by members of the family and therefore, he could not appear before the court concerned, cannot be completely, ruled out, at this stage.

17. As far as merit of the case is concerned admittedly victim is a major and married lady and she is collateral of the applicant and a dispute with regard to the property is pending between both the sides.

18. Further, from the record it reflects that at different stages victim changed her statements and in the FIR she only made allegation of outraging her modesty against the applicant and others and in the statement under section 161 Cr.P.C. she stated that applicant and others tried to insert their finger in her vagina and in her statement under section 164 Cr.P.C. she further developed the story and stated that in fact applicant and other co-accused persons have inserted their fingers in her vagina and thus committed rape upon her and therefore, it appears that there are contradictions in the statements of the victim recorded during investigation and even in the version narrated by her in the FIR.

19. However, applicant is also having criminal history of three cases but all the cases are of minor offences and for offences maximum punishment is 7 years and in all the cases even during investigation, applicant was not arrested by the Investigating Officer.

20. Further, applicant in the present matter is in jail since February, 2023 i.e. for last more than 10 months.

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

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

23. Let the applicant-**Rajesh Kumar Patel** 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.

24. 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.

25. 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

Ankita