

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 21194 of 2023

Applicant :- Ravi Yadav Alias Ravinder

Opposite Party :- State Of U.P.And 3 Others

Counsel for Applicant :- Nagendra Kumar Singh

Counsel for Opposite Party :- G.A.,Bharat Singh

Hon'ble Sameer Jain,J.

1. Heard Sri Nagendra Kumar Singh, learned counsel for the applicant; Sri Bharat Singh, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 34 of 2022, under Sections 376DA, 342, 376(2)N IPC and 5(᳚)/6 POCSO Act and 3(2)V SC/ST, Police Station Musajhag, District Budaun, during pendency of the trial in the court below.

3. FIR of the present case was lodged against the applicant and two others on 25.1.2022 through an application under section 156 (3) Cr.P.C. dated 21.10.2021 and according to the FIR, on 20.9.2021, daughter of the informant aged about 15 years had gone to ease herself but did not return and on 30.9.2021 i.e. after ten days, son of the informant found the victim on the road and victim informed him that when she had gone to ease herself then co-accused Mintu and Randhir abducted her and they taken her at the house of applicant in Ghaziabad and all the three committed rape with her.

4. It is further mentioned in the FIR that informant tried to lodge FIR but in spite of his best efforts, his FIR could not be lodged.

5. Learned counsel for the applicant submitted that the entire story narrated by informant in the FIR is totally false and FIR of the present case was lodged on the basis of application under section 156(3) Cr.P.C. and even application under section 156(3) Cr.P.C. was moved after about a month from the date of elopement of the daughter of the informant and even after three weeks, after recovery of his daughter.

6. He further submitted that although victim in her statements recorded under sections 161 and 164 Cr.P.C. made allegation of

rape against the applicant and two others but when during investigation, Investigating Officer recorded the statements of independent witnesses then they stated that victim was having affair with co-accused Mintu and she had gone along with him and thereafter final report was submitted in favour of the applicant and charge sheet was filed only against co-accused Mintu but at the time of taking cognizance on the basis of statements of the victim recorded under sections 161 and 164 Cr.P.C. applicant and co-accused Randhir both were summoned.

7. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 20.3.2023 i.e. for more than six months.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is hardly 15 years old girl and she in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of gang rape against the applicant and two others but both the counsels could not dispute the fact that FIR of the present case was lodged through an application under section 156(3) Cr.P.C. and even application under section 156(3) Cr.P.C. was moved after about a month from the date of recovery of the victim.

9. They further could not dispute the fact that independent witnesses informed the Investigating Officer that victim was having affair with co-accused Mintu and she had gone along with Mintu and thereafter final report was submitted in favour of the applicant and co-accused Randhir but at the time of taking cognizance, both were summoned by the learned Magistrate on the basis of the statements of the victim recorded during investigation.

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

11. However, from the perusal of the record, it reflects that it is a case of gang rape and victim who is aged about 15 years made allegation of rape against the applicant and two other accused but from the record, it also reflects that FIR of the present case was lodged through an application under section 156(3) Cr.P.C. and even application under section 156(3) Cr.P.C. was moved after three weeks from the date of recovery of girl and after about one month from the date of alleged elopement of the victim.

12. Further, from the the record it also reflects that during investigation when Investigating Officer recorded the statements

of the independent witnesses then they stated that victim was having affair with co-accused Mintu and she had gone along with him and thereafter in favour of the applicant and co-accused Randhir, final report was submitted but it appears that on the basis of the statement of the victim applicant and co-accused Randhir were summoned by the Magistrate concerned, at the time of taking cognizance.

13. Further, applicant is having no previous criminal history to his credit and he is in jail in the present matter since 20.3.2023 i.e. for more six months.

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

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

16. Let the applicant-**Ravi Yadav Alias Ravinder**, 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.

17. 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.

18. 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 :- 31.10.2023/Ankita