

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 31690 of 2021

Applicant :- Dharmendra

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Suneel Kumar Mishra, Amit Kumar Mishra, Kuldeep Kumar, Mohit Gautam, Rajesh Kumar Dubey, Sanjay Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. As matter also pertains to Section 376AB IPC, therefore, notices were issued to the informant of the case.
2. As per office report dated 12.10.2023 notice has been served upon the informant through mobile. Even, Dr. S.B. Maurya, learned AGA-I for the State apprised the Court that on 18.11.2021 notice has been served upon the informant. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Kuldeep Kumar, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.
4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 293 of 2020, under Sections 375C, 376AB IPC and Section 5M/6 POCSO Act, Police Station Chhatari, District Bulandshahar during pendency of the trial.
5. Learned counsel for the applicant submitted that initially applicant was challaned in the present matter only under Sections 354B IPC and Section 7/8 POCSO Act, therefore, earlier he applied bail for these two offences and on 26.03.2021 the co-ordinate Bench of this Court enlarged him on bail in the present case crime number for offences under Sections 354B IPC and 7/8 POCSO Act and bail order dated 26.03.2021 has been annexed as Annexure-8 to the affidavit filed in support of instant bail application.
6. He further submits that even charge-sheet against the applicant was also filed by the Investigating Officer under Section 354B IPC and 7/8 POCSO Act but at the time of taking cognizance, the court concerned took cognizance for offences

under Sections 354B IPC and 7/8 POCSO Act and Section 375C, 376AB IPC and Section 5M/6 POCSO Act and when applicant applied bail in these added sections, then his bail application was dismissed by the court concerned.

7. He further submits that from the order dated 26.03.2021 it reflects that after considering the entire facts of the case including statement of the victim, bail was granted to the applicant in the present matter under Section 354B IPC and 7/8 POCSO Act, therefore, applicant is also entitled to be released on bail in the added sections. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 31.07.2020 i.e. for more than three years.

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. It is a peculiar case in which applicant in the same case crime number has been released on bail under Section 354B IPC and 7/8 POCSO Act and even charge-sheet was filed against him in both these sections but at the time of taking cognizance Sections 375C, 376AB IPC and 5M/6 POCSO were added and all these facts have been considered by the court concerned at the time of dismissing the instant bail application of the applicant for offences under Sections 375C, 376AB IPC and Section 5M/6 POCSO Act and even from the bail order dated 26.03.2021 passed by this Court, it appears that after considering the entire facts of the case this Court granted bail to the applicant in Section 354B IPC and 7/8 POCSO Act.

11. From the record it reflects that after considering the entire facts of the case applicant has already been released on bail under Section 354B IPC and 7/8 POCSO Act and thereafter at the time of taking cognizance Sections 375C, 376AB IPC and Section 5M/6 POCOS Act were added and he is in jail for more than three years.

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

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

14. Let the applicant - **Dharmendra** 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.

15. 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.

16. 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

AK Pandey