

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34274 of 2020

Applicant :- Rohit

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

Counsel for Applicant :- Vidya Kant Shukla, Anand Pati Tiwari, Bhawesh Pratap Singh, Bimla Prasad, Om Shiv

Counsel for Opposite Party :- G.A., Dharendra Kumar Verma

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in the revised call.
2. Heard Shri Bimla Prasad, learned counsel for the applicant and Shri Brijesh Pratap Singh, learned A.G.A. for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.385 of 2020, under Sections 376D(A), 506 IPC & Sections 5(Chha)/6 POCSO Act, Police Station Mangalpur, District Kanpur Dehat, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 31.05.2020, under Sections 354, 506 I.P.C. and Section 8 POCSO Act against applicant and according to the FIR, applicant is neighbour of the informant and on 29.05.2020 at about 11:00 in the night in the absence of informant, he entered in the house of the informant and made sexual assault upon his daughter aged about thirteen years and when his daughter screams, he ran away.
5. Learned counsel for the applicant submits that in the FIR, there is no allegation of rape but when statements of the victim were

recorded under Sections 161 and 164 Cr.P.C., she started making allegation of rape against the applicant.

6. He further submits that in statement under Section 161 Cr.P.C. victim stated that only applicant committed rape with her but when her statement under Section 164 Cr.P.C. was recorded, she stated that applicant alongwith co-accused Abhishek committed rape with her and therefore, there are material contradictions in both the statements of the victim as far as manner of alleged rape is concerned.

7. He further submits that actually applicant is the first cousin of the victim and property dispute is pending between both the sides and only due to this reason, applicant has been made accused in the present matter.

8. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 31.05.2020 i.e. for almost three and half years and till date, trial of the case could not be concluded.

9. Per contra, learned AGA opposed the prayer for bail and submits that victim was hardly thirteen years old girl and in her both the statements recorded under Sections 161 and 164 Cr.P.C., she made allegation of rape against the applicant but could not dispute the fact that even record suggests that applicant and victim are close relatives and applicant is in jail since 31.05.2020 i.e. for almost three and half years.

10. Learned A.G.A. further could not dispute the fact that medical report of the victim also does not corroborate the allegation of gang rape as stated by her in her statement under Section 164

Cr.P.C.

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

12. However, victim in her statement recorded under Section 161 Cr.P.C. stated that applicant committed rape with her but when her statement under Section 164 Cr.P.C. was recorded, she changed the manner of incident and stated that applicant and co-accused Abhishek committed rape with her.

13. Further, there is no allegation of rape in the FIR of the present case, which was lodged by the father of the victim on the information furnished by her.

14. Further, from the record, it also reflects that applicant and victim are close relatives and however in her statement under Section 164 Cr.P.C., victim made allegation of gang rape against the applicant and co-accused Abhishek but her medical report does not corroborate the allegation of gang rape as doctor did not find any injury on the body of the victim at the time of her medical examination.

15. Further, applicant is not having any criminal history and he is in jail in the present matter since 31.05.2020 i.e. for almost three and half years.

16. Therefore, considering the facts and circumstances of the case particularly the fact that applicant is in jail in the present matter since 31.05.2020 i.e. for almost three and half years, in my view, applicant is entitled to be released on bail.

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

18. Let the applicant- **Rohit**, 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.

19. 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.

20. 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 :- 28.11.2023
Zafar