

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35243 of 2020

Applicant :- Arvind Kumar

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

Counsel for Applicant :- Brij Bhushan Prasad Shrivastava, Gagan Pratap Singh, Rajesh Kumar Singh

Counsel for Opposite Party :- G.A., Ajay Kumar

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri R.K. Singh, learned counsel for the applicant; Sri H.C. Gupta Advocate holding brief of Sri Ajai Kumar, learned counsel for the informant and Sri Kunwar Tejendra Bahadur, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 049 of 2020, under Sections 376, 384, 504, 506 IPC & 3/4 POCSO Act, Police Station Barhan, District Agra, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and according to the FIR, applicant procured the obscene videos and photographs of the daughter of the informant aged about 16 years and under the threat to viral the same has taken from her Rs. Three lacs forty thousand of the informant which was kept in the house.
5. It is further mentioned in the FIR that victim also informed the informant that applicant under the threat to viral her obscene photographs made physical relationship with her.
6. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and baseless and actually applicant and victim both were having love affair but when this fact was revealed to the informant then he lodged the FIR of the present case.
7. He further submitted that the photograph of the victim and the applicant have been annexed alongwith the instant application

which also suggests that both were having love affair.

8. He further submitted that although as per the informant, victim was about 16 years old but according to the certificate of the C.M.O. concerned, she was about 18 years old and therefore, it appears that she was major.

9. He further submitted that although victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but in both the statements she stated that on the basis of her obscene photographs, applicant committed rape with her but during investigation no such photographs and videographs of the victim could be recovered and this fact clearly suggests that on the instigation of her parents, victim has made false allegation of rape against the applicant.

10. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 21.3.2020 i.e. for more than three and half years.

11. Per contra, learned AGA as well as learned counsel for the informant although opposed the prayer for bail and submitted that victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but both the counsels could not dispute the fact that although as per allegation on the basis of obscene photographs of the victim applicant committed rape with her but during investigation, the alleged photographs and videographs of the victim could not be recovered.

12. They further could not dispute the fact that applicant is in jail in the present matter since 21.3.2020 i.e. for last more than three and a half years.

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

14. Although, victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but in both the statements she stated that on the basis of her obscene photographs, applicant committed rape with her under the threat to viral the same but during investigation no such photographs and videographs of the victim could be recovered.

15. Further, applicant is having no criminal history and he is in jail in the present matter since 21.3.2020, i.e. for more than three and a

half years.

16. Therefore, considering the facts and circumstances of the case, discussed above, 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- **Arvind Kumar**, 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 :- 16.10.2023

Ankita