

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37846 of 2020

Applicant :- Jai Prakash Maurya

Opposite Party :- State of U.P.

Counsel for Applicant :- Vyas Deo, Pratibha Jaiswal, Rajiv Lochan Shukla

Counsel for Opposite Party :- G.A., Gunjan Dwivedi, Kaushlesh Datt Shukla

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in the revised call. However, learned AGA for the State-respondent is present.
2. Heard Ms. Pratibha Jaiswal, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 230 of 2019, under Sections 363, 366A, 376D, 506, 120B, 34 IPC & Section 5(G)/6 POCSO Act, Police Station Haliya, District Mirzapur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and three others and according to the FIR, applicant and other accused persons enticed away the daughter of the informant and committed rape upon her.
5. It is further mentioned in the FIR that daughter of the informant was minor.
6. Learned counsel for the applicant submitted that on the basis of fake allegation, FIR of the present case was lodged.
7. She further submitted that even the date of incident has not been mentioned in the FIR.
8. It is further argued that however, victim in her both the statements recorded under sections 161 and 164 Cr.P.C. stated that applicant and co-accused Mahendra committed rape upon her but it appears that she very casually roped the applicant in the present matter and it appears that she was having relationship with the co-

accused Mahendra.

9. She further submitted that however, there is allegation of gang rape but in spite of that no injury was noted by the doctor on the body of the victim and this fact shows that a false story has been cooked up by the victim against the applicant.

10. She further submitted that applicant is having no criminal history and he is in jail in the present matter since 3.12.2019 i.e. four last more than for years.

11. She further submitted that all the witnesses of facts have already been examined by the trial court including victim and there is no chance of tampering the prosecution evidence.

12. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record at the time of incident, victim was 15 years old and even as per her radiological age she is 16-17 years old and she in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and co-accused Mahendra but could not dispute the fact that applicant is having no criminal history and he is in jail in the present matter for last more than 4 years and victim of the case had already been examined by the trial court.

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

14. However, from the perusal of the record, it reflects that victim was around 16 years old girl and she made allegation of rape against the applicant and co-accused Mahendra but from her statement recorded under section 161 Cr.p.C. it appears that very casually she made allegation of rape against the applicant. However, from its perusal, it appears that co-accused Mahendra is the person who teased her and also tortured her.

15. Further, when her statement under section 164 Cr.P.C. was recorded then she elaborately alleged that applicant and other co-accused persons alongwith Mahendra enticed her and thereafter applicant and co-accused Mahendra committed rape upon her and therefore, there are material contradictions in the statements of the victim as far as manner of the incident is concerned.

16. Further, applicant is having no criminal history and he is in jail in the present matter since December, 2019 i.e. for last more than four years.

17. Further, all the witnesses of fact including victim have already been examined by the trial court and therefore, I find force in the argument advanced by learned counsel for the applicant that there is no chance of tampering with the prosecution evidence.

18. Therefore, considering the facts and circumstances of the case, discussed above, particularly the long incarceration of applicant of more than four years and the fact that all the witnesses of fact have already been examined by the trial court, in my view, applicant is entitled to be released on bail.

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

20. Let the applicant-**Jai Prakash Maurya**, 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.

21. 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.

22. 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 :- 11.12.2023

Ankita