

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25888 of 2023

Applicant :- Sunil Kumar

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

Counsel for Applicant :- Sunil Kumar Singh, Vinay Kumar

Counsel for Opposite Party :- G.A., Beena Mishra

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Brijesh Pratap Singh, learned AGA for the State apprised the Court that on 13.06.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
3. From the record, it also reflects that name of Ms. Beena Mishra, Advocate, has been mentioned in the cause list as a counsel for the High Court Legal Services but she is also not present even in revised call.
4. Heard Sri Vinay Kumar, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State-respondent.
5. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 28 of 2016, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Eka, District- Firozabad, during pendency of the trial in the court below.
6. 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 aged about 16 years.
7. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and when the statements of the victim were recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. then she did not even disclosed the name of the applicant and categorically stated that

she was having love affair with co-accused Arvind @ Aarami and after performing marriage with him, she started living with him as his wife.

8. He further submitted that however, FIR of the present case was lodged in the year 2016 but applicant was never interrogated by the police and for his livelihood he had gone out of Station and when it was revealed to the applicant that coercive measures are being taken against him then he returned and appeared before the court concerned and since 07.02.2023 he is in jail. He further submitted that applicant is not having any criminal history.

9. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not even disclose the name of the applicant and applicant is in jail since February, 2023.

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

11. However, it appears that FIR of the present case was lodged in the year 2016 and applicant appeared before the court concerned on 07.02.2023 i.e. after more than six years but in the supplementary affidavit filed in support of the instant bail application, applicant has taken a plea that due to livelihood, he had to go to other State and he could not become aware about the instant matter and when he came to know that coercive measures are being taken against him then he appeared before the court concerned. Considering the statements of the victim recorded under under Sections 161 Cr.P.C. and 164 Cr.P.C., in which she did not even disclose the name of the applicant, explanation given by the applicant cannot be completely brushed aside at this stage.

12. As victim did not make any allegation against the applicant and categorically stated that she loved the co-accused Arvind @ Aarami and after performing marriage, she started living with him and applicant is in jail for last more than 10 months, in my view applicant is entitled to be released on bail.

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

14. Let the applicant- **Sunil 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.

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 :- 12.12.2023

KK Patel