

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 26684 of 2023

Applicant :- Aniket Chauhan (Balmiki)

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

Counsel for Applicant :- Sushil Kumar Pandey, Hari Shankar, Sunil Vashisth

Counsel for Opposite Party :- G.A., Afshan Shafaut

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Pradeep Kumar, learned AGA apprised the Court that on 15.6.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant or on behalf of the High Court Legal Services Committee.
3. Heard Sri Sushil Kumar Pandey, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 807 of 2022, under Sections 376 D(A), 328, 500, 506, 315 IPC and 5(1)/6 POCSO Act, Police Station Kotwali Lalitpur, District Lalitpur, during pendency of the trial in the court below.
5. FIR of the present case was lodged on 2.12.2022 against the applicant and others and according to the FIR, sister of the applicant used to call the daughter of the informant aged about 10 years at her house where applicant and other male accused committed rape upon her and she was being sexually exploited for last six months.
6. It is further mentioned in the FIR that they have also prepared her videographs and due to their sexual exploitation daughter of the informant also conceived but they caused her miscarriage.
7. It is further mentioned in the FIR that on 30.11.2022, sister of the applicant threatened the informant that if any legal action will

be taken then obscene videograph of his daughter will be posted on social media.

8. Learned counsel for the applicant submitted that on the basis of false allegation applicant has been made accused in the present matter.

9. He further submitted that story narrated by the informant in the FIR appears to be highly improbably and no reliance can be placed on such version.

10. He further submitted that neither any date nor time of the alleged rape and sexual exploitation has been mentioned in the FIR.

11. He further submitted that when the statements of the victim were recorded under section 161 and 164 Cr.P.C. then she made allegation of rape and sexual exploitation against the applicant but she did not make any allegation of rape against other accused persons.

12. He further submitted that even story narrated by victim in her both the statements recorded during investigation appears to be highly improbable and she also on the basis of vague allegation of rape and sexual exploitation, implicated the applicant in the present matter.

13. He further submitted that even in both the statements of the victim recorded during investigation no date of rape has been mentioned and only stated that first time about six months before applicant committed rape upon her.

14. He further submitted that actually marriage of the applicant and victim could not be solemnized due to the intervention of the sister of the applicant i.e. co-accused Anjali and only due to this reason, applicant has been made accused in the present matter.

15. He further submitted that however applicant is having criminal history of two other cases but his criminal history has been explained in the supplementary affidavit filed in support to the instant bail application and in both the cases applicant has already been released on bail.

16. He further submitted that applicant is in jail in the present matter since 6.12.2022 i.e. for last more than a year.

17. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that even victim in her both the statements recorded during investigation did not disclose the date of rape and applicant is in jail for last more than a year.

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

19. However, there are serious allegation of gang rape against the applicant and others in the FIR of the present case but FIR of the present case is based on vague facts and it appears that it has been lodged after several months. Further, when the statements of the victim were recorded under sections 161 and 164 Cr.P.C. then she made only allegation of rape and sexual exploitation against the applicant and in both the statement also victim did not specify the date of the alleged rape and sexual exploitation alleged to have been committed by the applicant upon her.

20. Further, it reflects that about six months before, first time applicant committed rape upon her and therefore, it appears that after several months of the incident, FIR of the present case was lodged.

21. However, as per the prosecution applicant also prepared obscene videographs of the victim but during investigation such video of the victim could not be recovered.

22. From the record, it further reflects that victim is about 14 and half years old as per school record but according to the CMO concerned she was about 17 years old and therefore, at this stage, it cannot be precisely said that she was even below 18 years of age.

23. However, applicant is having criminal history of two cases but he has explained the same by means of filing supplementary affidavit to the instant bail application and in both the cases applicant has already been released on bail.

24. Further, applicant is in jail in the present matter since 6.12.2022 i.e. for last more than a year.

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

26. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application is **allowed**.

27. Let the applicant-**Aniket Chauhan (Balmiki)** 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.

28. 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.

29. 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 :- 13.12.2023

Ankita