

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42776 of 2021

Applicant :- Naushad

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Ashwini Kumar Srivastava, Hemant Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Pradeep Kumar, learned AGA apprised the Court that on 17.3.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Ashwini Kumar Srivastava, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 86 of 2021, under Sections 363, 364, 376 Ka, Kha IPC and 5-Da/6 POCSO Act, Police Station Nauchandi, District Meerut, during pendency of the trial in the court below.
4. FIR of the present case was lodged against unknown person and according to the FIR some unknown person abducted the daughter of the informant aged about 4 years.
5. Learned counsel for the applicant submitted that as per allegation daughter of the informant was abducted on 2.3.2021 and FIR of the present case was lodged on 3.3.2021 at about 15:05 hours but on same day after registration of the FIR, informant himself moved an application to the police station concerned and stated that his daughter has been recovered and she herself had gone somewhere on her own while she was playing and she does not want to proceed any further but subsequently it appears that informant made a complaint that victim is having pain on her private part and thereafter her medical examination was conducted and in it, vaginal swelling was found and thereafter during investigation on the basis of the information furnished by police informer, applicant was made accused in the present matter.

6. He further submitted that except the information furnished by the police informer, there is no other evidence on record against the applicant.
7. He further submitted that as per allegation applicant was arrested in police encounter thereafter he was roped under section 307 IPC and 25 Arms Act and except the present case and above noted two cases, applicant is not having any other criminal history to his credit.
8. He further submitted that applicant is in jail in the present matter since 11.3.2021 i.e. for last more than two and half years.
9. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case in which four years old female child was molested and her medical report also supports the prosecution case but could not dispute the fact that except the information furnished by the police informer, there is no other evidence against the applicant on record and applicant is in jail for last more than two and half years.
10. I have heard learned counsel for the parties and perused the record of the case.
11. However, as per allegation the daughter of the informant aged about 4 years was abducted but on the same day when FIR was lodged by the informant then informant moved an application to the police station concerned and stated that actually his daughter was never abducted and he went little bit far from the place where she was playing and now she has already been recovered and she did not want to proceed any further with the case but on the basis of the medical report of the victim in which vaginal swelling was found, investigation was continued and during investigation on the basis of information furnished by police informer, applicant was made accused.
12. From the perusal of the entire material available on record, it appears that except the information given by the police informer, there is no other evidence against the applicant on record.
13. However, applicant is having criminal history of two other cases but it reflects that when he was arrested then police made him accused for the offence under section 307 IPC and he was also made accused under section 25 Arms Act.
14. Further, applicant is in jail in the present matter since

11.3.2021 i.e. for last more than two and half years.

15. Therefore, considering the facts and circumstances of the case, discussed above, particularly the long incarceration of the applicant of more than two and half years, in my view, applicant is entitled to be released on bail.

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

17. Let the applicant-**Naushad** 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.

18. 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.

19. 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

Ankita