

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33396 of 2023

Applicant :- Rajesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed on behalf of the applicant in Court today is taken on record.
2. Heard Shri Rajesh Kumar Tiwari, learned counsel for the applicant and Shri Pradeep Kumar, learned A.G.A. for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.16 of 2019, under Section 498, 376(1) IPC, Police Station Ahmadgarh, District Buland Shahar, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 26.01.2019 against applicant and others and according to the FIR, about fifteen days before, applicant and other nominated accused committed gang rape upon the informant, who is a major and married lady.
5. Learned counsel for the applicant submits that informant i.e. victim of the case is a major and married lady and story narrated by her appears to be quite improbable and no reliance can be placed on such version.
6. He further submits that informant i.e. victim of the case at

different stages changed her version and in the FIR, she stated that four persons including applicant committed rape upon her and in her both the statements recorded under Sections 161 and 164 Cr.P.C., she stated that 2-3 persons committed rape upon her, therefore, she is not a reliable witness.

7. He further submits that even from the statement of the informant i.e. victim of the case recorded under Section 164 Cr.P.C. her consent is quite apparent.

8. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 11.02.2019 i.e. for last more than four and a half years.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that informant i.e. victim of the case is a major and married lady and she changed her version at different stages and applicant is in jail for last more than four and a half years.

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

11. However, in the FIR as well as in both the statements of the informant i.e. victim of the case recorded under Sections 161 and 164 there is allegation of rape against the applicant but it appears that at different stages, she introduced different persons however, with regard to the applicant her case was intact.

12. Further, informant i.e. victim of the case is a major and married lady and I find force in the argument advanced by learned counsel for the applicant that story narrated by the victim does not appear to be convincing.

13. Further, applicant is not having any criminal history and he is in jail in the present matter since 11.02.2019 i.e. for last more than four and a half years.

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

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

16. Let the applicant- **Rajesh**, 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.

17. 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.

18. 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 :- 2.12.2023

Zafar