

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33829 of 2023

Applicant :- Dharmendra Gupta

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

Counsel for Applicant :- Bhriguram Ji, Shashi Shekhar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Jhamman Ram, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 5.11.2023.
2. As per office report dated 21.11.2023 also notice has been served to the informant.
3. Despite service of notice, none appeared on behalf of the informant.
4. Heard Sri Shashi Shekhar Maurya, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.412 of 2023, under Section 376 IPC and Section 5/6 POCSO Act, Police Station Pipraich, District Gorakhpur during pendency of the trial.
6. Learned counsel for the applicant submits that initially an FIR under Section 363 IPC was lodged on 16.4.2023 by one relative of the victim of the present matter with regard to the missing of the victim at Police Station Safdarjung Enclave, Delhi vide Case Crime No. 1 of 2023 and after the FIR dated 16.4.2023 victim was recovered and her statement was recorded and on the basis of

her statement another FIR was lodged at Zero Case Crime at Police Station Safdarjung Enclave, South West, Delhi on 21.4.2023 which has been annexed as Annexure-3 to the affidavit filed in support of the instant bail application and from its perusal it appears that victim did not even disclose the name of the applicant and stated that she loved with Anoop and developed relationship with him and thereafter she became pregnant with him. He further submits, thereafter matter was transferred to District Gorakhpur and FIR was registered at Case Crime No. 412 of 2023 at Police Station Pipraich, District Gorakhpur and in the FIR lodged at Police Station Pipraich, District Gorakhpur only co-accused Anoop was nominated but when the statement of victim was recorded under Section 161 Cr.P.C. then she developed new story and stated that along with co-accused Anoop Yadav applicant and co-accused Kripal also committed rape with her and similar statement was given by the victim in her statement under Section 164 Cr.P.C.

7. He further submits that this fact clearly suggests that on the basis of false allegation subsequently applicant has been made accused along with co-accused Anoop Yadav and Kripal.

8. He further submits that applicant is the friend of co-accused Anoop Yadav and this fact is even evident from the statement of the victim recorded under Section 161 Cr.P.C. and only due to this reason he has been made accused in the present matter.

9. He further submits that during investigation complicity of co-accused Kripal was found false and no charge sheet was filed against him.

10. He further submits that applicant is not having any previous

criminal history and in the present matter he is in jail since 6.6.2023, i.e., for almost six months.

11. Per contra, learned AGA opposed the prayer for bail and submits that as per school record victim was even below 14 years and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant along with co-accused Anoop Yadav but he could not dispute the fact that victim was recovered in Delhi on the basis of FIR lodged under Section 363 Cr.P.C. on 16.4.2023 and she after recovery only disclosed the name of co-accused Anoop Yadav and did not even disclose the name of the applicant.

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

13. However, victim of the present case as per school record appears to be child aged about 14 years and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant, co-accused Anoop Yadav and one Kripal but from the record it reflects that with regard to the missing of the victim of the present matter earlier an FIR was lodged by her relative on 16.4.2023 under Section 363 IPC against unknown persons at Police Station Safdarjung Enclave, South West, Delhi at Case Crime No. 130 of 2023 and pursuant to the FIR dated 16.4.2023 when victim was recovered then her statement was recorded and in her statement (Annexure-3) she did not even disclose the name of applicant and categorically stated that she loved co-accused Anoop Yadav and also became pregnant with him and on the basis of her statement another FIR at Zero Case crime Number was lodged on 21.4.2023 at Police Station Safdarjung Enclave, South West, Delhi and thereafter it appears

that matter was transferred to the State of Uttar Pradesh in District Gorakhpur and another case was registered at Police Station Pipraich, District Gorakhpur (present case) and in the FIR lodged at Police Station Pipraich, District Gorakhpur co-accused Anoop Yadav was named on the basis of the statement of the victim recorded at Delhi.

14. Further, it appears that when after registration of the case in Gorakhpur investigation was started then victim during investigation in her both the statements recorded under Section 161 and 164 Cr.P.C. made allegation of rape against the applicant, co-accused Anoop Yadav and Kripal and therefore, it appears that she developed a new story in her statement recorded under Sections 161 and 164 Cr.P.C. in the present case.

15. From the record it also reflects that applicant is the friend of co-accused Anoop Yadav and, therefore, argument advanced by the learned counsel for the applicant cannot be completely ruled out at this stage.

16. Further, however in her both the statements recorded during investigation victim also made allegation of rape against one Kripal but during investigation her involvement was found false and no charge sheet was filed against him.

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

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

19. Let the applicant-**Dharmendra Verma** 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.

20. 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.

21. 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 :- 22.11.2023
SKM