

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46724 of 2021

Applicant :- Pradeep Maurya

Opposite Party :- State of U.P.

Counsel for Applicant :- Pramod Kumar Maurya

Counsel for Opposite Party :- G.A., Yashwant Pratap Singh

Hon'ble Sameer Jain,J.

1. None present on behalf of the informant even in the revised call. However, learned AGA for the State-respondent is present.
2. Supplementary affidavit filed today on behalf of the applicant, is taken on record.
3. Heard Sri Pramod Kumar Maurya, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 348 of 2021, under Sections 376D IPC, Section 5/6 POCSO Act and Sections 3(2)5, 3(1) (W)(i) SC/ST Act, Police Station Gulriha, District Gorakhpur, during pendency of the trial in the court below.
5. FIR of the present case was lodged against the applicant and one Govind Maurya and according to the FIR, applicant is nephew of the landlord of the informant and in his absence he alongwith the son of the landlord of the informant committed rape with his daughter aged about 13 years.
6. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and only being nephew of the landlord of the informant, he has been made accused in the present matter.
7. He further submitted that actually upon the informant eight months rent was due but in the meantime, he also borrowed money from the maternal uncle of the applicant and when his uncle demanded back his money then instead of returning the money applicant has been made accused in the present matter.

8. He further submitted that even from the perusal of the FIR and the statement of the victim it appears that very casually on the basis of allegation of gang rape, applicant has been roped in the present matter alongwith the son of the landlord.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 6.7.2021 i.e. for more than two years. He further submits that although applicant is in jail for more than two years but till date not even a single prosecution witness could be examined and this fact shows that trial court of the case is moving with languid pace and there is no hope of its early disposal.

10. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is hardly 13 years old girl and she in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and Govind but he could not dispute the fact that doctor did not find any injury on the person of the victim at the time of her medical examination and applicant is the nephew of the landlord of the informant and some dispute between both of them was pending.

11. He further could not dispute the fact that applicant is not having any previous criminal history and he is in jail in the present matter since 6.7.2021 i.e. for more than two years and till date not even a single prosecution witness could be examined.

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

13. From the perusal of the record, it appears that victim was hardly 13 years old at the time of incident and she made allegation of rape against the applicant and Govind in her both the statements recorded during investigation but from the record, it reflects that during medical examination, doctor did not find any injury on her body and applicant is the nephew of the landlord of the informant and in para-12 of the affidavit a specific averment has been made by the applicant that some dispute was pending between informant and uncle of the applicant who is the landlord of the informant and only being nephew of the landlord of the informant, applicant has been dragged in the present matter.

14. Further, applicant is in jail in the present matter since July, 2021, i.e. for more than 2 years and till date, not even a single prosecution witness could be examined, therefore, it appears that trial of the case is moving with languid pace and there is no hope

of its early disposal.

15. Therefore, considering the facts and circumstances of the case, discussed above, particularly the long incarceration of the applicant for more than 2 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-**Pradeep Maurya** 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 :- 30.10.2023

Ankita