

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40194 of 2022

Applicant :- Shakeel

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

Counsel for Applicant :- Gopal Das Srivastava

Counsel for Opposite Party :- G.A.,Abhinav Gaur,Mohd. Rashid Siddiqui

Hon'ble Sameer Jain,J.

1. Heard Sri Gopal Das Srivastava, learned counsel for the applicant, Sri Ankit Shukla, Advocate, holding brief of Sri Abhinav Gaur, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 260 of 2022, under Sections 354-D, 363, 366, 376/511, 504 IPC & 18 POC SO Act, Police Station- Kotwali Padrauna, District- Kushinagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and one another and according to the FIR, niece of the informant aged about 15 years, had gone to her coaching in the morning and applicant alongwith co-accused enticed her away and subsequently dropped her after the coaching hours.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and on the basis of false allegation, applicant has been made accused in the present matter. He further submitted that applicant and victim were good friends and victim although, in her statement recorded under Section 161 Cr.P.C. stated that applicant and co-accused have forcibly taken her on their motorcycle but in fact she herself had gone alongwith them and even in her statement recorded under Section 161 Cr.P.C. she did not make any allegation of sexual assault or rape. He further submitted that in the statement recorded under Section 164 Cr.P.C., victim did not make allegation of rape and he made only allegation of sexual assault, therefore, there are material contradictions in both the statements of the victim.

5. He further submitted that applicant is not having any criminal history and he is in jail since 10.06.2022 i.e. for almost one and half years.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is hardly 15 years' old girl but could not dispute the fact that neither in the statement recorded under Section 161 Cr.P.C. nor in the statement recorded under Section 164 Cr.P.C. there was any allegation of rape and in both the statements of the victim, there are material contradictions. He further could not dispute the fact that applicant is in jail since 10.06.2022.

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

8. Considering the fact that neither in the statement recorded under Section 161 Cr.P.C. nor in the statement recorded under Section 164 Cr.P.C., there was any allegation of rape and there are material contradictions in the story narrated by the victim in her both the statements and applicant is in jail since 10.06.2022 i.e. for almost one and half years, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant- **Shakeel** 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.

11. 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.

12. 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 :- 6.11.2023

KK Patel