

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43519 of 2022

Applicant :- Mahavir Singh

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

Counsel for Applicant :- Rama Shankar Mishra

Counsel for Opposite Party :- G.A.,Abhilasha Singh,Ashutosh Yadav,Shyam Lal

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Rama Shankar Mishra, learned counsel for the applicant, Ms. Abhilasha Singh, learned counsel for the informant and Sri Santosh Kumar learning AGA for the state.
3. FIR of the present case was lodged against the applicant and two other persons and according to the FIR, co-accused Tinku enticed away the daughter of the informant aged about 14 years and committed rape with her and thereafter co-accused Chhote Lal and the applicant also committed rape with her.
4. Learned counsel for the applicant submitted the entire story narrated by the informant in the FIR is totally false and applicant is distant uncle of co-accused Tinku therefore, he was made accused in the present matter.
5. It is further submitted that although victim in her both the statements recorded under sections 161 as well as 164 Cr.P.C. made allegations of rape against the applicant and two others but as per her statement, it appears that she, on the instigation of the informant made allegations of rape. He further submits that although there are allegations that three persons committed rape but doctor did not find any injury on the person of the victim.
6. It is further submitted that bail application of co-accused Chhote Lal has already been allowed by Co-ordinate Bench of this court vide order dated 29/3/2022 passed in Crl. Misc. Bail Application No. 40479 of 2022 and case of the applicant is at par with him. He placed the order of co-accused Chhote Lal which is taken on

record and marked as 'A'. It is further submitted that applicant is not having any previous criminal history and he is in jail since 25/4/2022 that is for more than one and a half years.

7. Per Contra, learned AGA and learned counsel for the informant opposed the prayer for bail and submit that it is a case of gang rape and there is allegation that applicant along with two other accused persons committed rape with the victim but both the counsels could not dispute the fact that applicant is distant uncle of co-accused Tinku and in her statement recorded under section 161 Cr.P.C., the victim stated that she was having friendship with co-accused Tinku. They also could not dispute that applicant is in jail since more than one and a half years and bail application of co-accused Chhote Lal has been allowed by this court.

8. I have heard both the parties and perused the record.

9. Although, it appears that it is a case of gang rape and as per the informant the age of the victim is 14 years but according to the transfer certificate of school, the age of the victim, at the time of the incident, was 17 years. Further, although as per allegations, the applicant and two others committed rape with the victim but in spite of that when victim was medically examined, the doctor did not find any injury on her body. Further, the story narrated by the victim appears to be quite improbable and co-accused Chhote Lal has already been released on bail by Co-ordinate Bench of this Court and case of the applicant is at par with him. The applicant has no criminal history and he is in jail for more than one and a half years.

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

11. Let the applicant Mahavir Singh 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.

12. In case of breach of any of the above conditions, the prosecution will be at liberty to move an application before this Court for cancellation of bail of the applicant.

13. 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 :- 16.10.2023

Madhurima