

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39058 of 2023

Applicant :- Sohaib @ Shoaib

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

Counsel for Applicant :- Shahid Ali Siddiqui, Shamsuddin Ahmad

Counsel for Opposite Party :- G.A., Anil Kumar Tiwari, Gunjan Sharma

Hon'ble Sameer Jain, J.

1. Counter affidavit filed today on behalf of the informant is taken on record.
2. Heard Sri Shamsuddin Ahmad, learned counsel for the applicant, Sri A.K. Tiwari, learned counsel for the informant, Sri L.B. Maurya, learned AGA-I for the State and Ms. Gunjan Sharma appearing on behalf of High Court Legal Services.
3. The instant bail application has been filed on behalf of the applicant seeking release on bail in Case Crime No. 283 of 2023 under sections 363, 366, 354, 352, 328, 504, 506, 427, 376 (2) IPC and 3/4 POCSO Act, Police Station Katra, District Shahjahanpur.
4. FIR of the present case was lodged against the applicant and seven others on 08.6.2023. According to the FIR, in the night of 24/25, May, 2023, daughter of the informant, aged about 14 years, was found missing from her house and she was later found in Delhi and she informed the informant that for the last one year, applicant and his two associates were sexually assaulting her when she went to school and one day they abducted her and, thereafter, dropped her in the locality. It is further mentioned in the FIR that under the threat to viral her photographs, applicant duped Rs. 16,000/- and jewellery of the mother of the victim from the victim.
5. Learned counsel for the applicant submits on the basis of vague allegations, FIR of the present case was lodged and in the FIR there is no allegation of rape. He further submits, when statement of the victim was recorded under section 161 Cr.P.C. then she stated that on 21.1.2023, applicant and other accused persons abducted and sexually assaulted her and she further stated that on 24.5.2023, co-accused Arbaz and Arman told her to go to Delhi

along with Rs. 1.5 lacs. It is further stated by her in her statement under section 161 Cr.P.C. that Rs. 60,000/- has been taken by co-accused Aamir. He further submits when statement of the victim was recorded under section 164 Cr.P.C. then she changed her earlier version and did not make any allegation of abduction and stated that she herself had gone to Delhi on 25th of May and did not make any allegation of cheating or rape against the applicant. However she made allegation of gang rape against co-accused Salman, Arbaaz, Armaan and Rizwan. He next submitted all the accused persons against whom there were allegations of gang rape in her statement recorded under section 164 Cr.P.C., have been exonerated by the investigating officer.

6. He further submit applicant is not having any previous criminal history and he is in jail since 25.7.2023.

7. *Per contra*, learned AGA, learned counsel for the informant and learned counsel appearing on behalf of High Court Legal Services Committee opposed the prayer for bail and and submit that victim is hardly 14 years old and in her statement under section 161 Cr.P.C, she has categorically stated that applicant and other accused persons abducted her but they could not dispute the fact that there was no allegation of rape either in the FIR or in the statement of the victim recorder section 164 Cr.P.C.

8. However, learned counsel for the informant submits that family members of the applicant are hardened criminals and only due to their pressure, victim could not disclose correct facts in her statements recorded during investigation but he conceded that applicant is not having any previous criminal history.

9. I have heard all sides and perused the record of the case.

10. Considering the fact that however victim in her statement under section 161 Cr.P.C. made allegations of abduction against the applicant and others but she did not make any allegation against the applicant in her statement recorded under section 164 Cr.P.C. including the allegation of rape and applicant is not having any criminal history, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant **Sohaib @ Shoaib** 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.

13. 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.

14. 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 :- 4.12.2023

Madhurima