

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 45339 of 2022

**Applicant :-** Mohammad Bhura

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

**Counsel for Applicant :-** Aishwarya Pratap Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Sri Pradeep Kumar, learned AGA for the State apprised the Court that on 10.10.2022 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Rahul Kumar Pandey, Advocate, holding brief of Sri Aishwarya Pratap Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 336 of 2022, under Sections 363, 366, 376, 506 IPC & 3/4 POCSO Act, Police Station-Sasanigate, District- Aligarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and others under Sections 363, 366, 506 IPC and according to the FIR, applicant and other accused persons enticed away the daughter of the informant aged about 16 years.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and victim in her statement recorded under Section 161 Cr.P.C. stated that she herself had gone alongwith the applicant to Jaipur, Rajasthan and she also stated that no physical relationship was developed between her and applicant but when her statement was recorded under Section 164 Cr.P.C. then she changed her earlier version and stated that applicant alongwith his family members abducted her and thereafter committed rape with her in Jaipur, Rajasthan. He further submitted that considering the material contradictions in the statements of the victim, no reliance can be placed on the statements of such witness.

6. He further submitted that applicant is although, having criminal history of three other cases to his credit but criminal history of the applicant has been explained in the supplementary affidavit filed in support of the instant bail application and he is in jail in the present matter since 20.07.2022 i.e. for more than a year.

7. Per contra, learned AGA opposed the prayer for bail and submitted that as per the school record, victim was below 17 years' old at the time of incident and she in her statement recorded under Section 164 Cr.P.C. stated that applicant committed rape with her but could not dispute the fact that in the statement of the victim recorded under Section 161 Cr.P.C. there was no allegation of rape against the applicant and victim in her statement recorded under Section 161 Cr.P.C. categorically stated that no physical relationship was developed between her and applicant. He further could not dispute the fact that applicant is in jail for more than a year.

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

9. Although, from the school record of the victim, it appears that at the time of incident she was around 17 years' old but during investigation, her ossification test was not conducted.

10. Further, although, victim in her statement recorded under Section 164 Cr.P.C. stated that applicant abducted her with the help of his family members and also committed rape with her in Jaipur, Rajasthan but no such story was narrated by her in her statement recorded under Section 161 Cr.P.C. and in her statement recorded under Section 161 Cr.P.C., victim categorically stated that she on her own had gone along with the applicant and no physical relationship was developed between her and applicant.

11. Further, however, it appears that applicant is having criminal history of three cases but his criminal history has been explained in the supplementary affidavit.

12. Law is settled that bail application should not be dismissed merely on the basis of criminal history, if otherwise, case of bail is made out.

13. Further, applicant is in jail since July, 2022 i.e. for more than a year but till date, trial of the case could not be concluded.

14. Therefore, considering the facts and circumstances of the case

discussed above, in my view applicant is entitled to be released on bail.

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

16. Let the applicant- **Mohammad Bhura** 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.

17. 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.

18. 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 :- 27.10.2023**

**KK Patel**