

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39492 of 2023

Applicant :- Rajesh Kumar Raja

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

Counsel for Applicant :- Sudhir Kumar Tiwari

Counsel for Opposite Party :- G.A., Sarfaraj Ahamad Siddiquei, Suhel Akhtar

Hon'ble Sameer Jain, J.

1. Heard Sri Sudhir Kumar Tiwari, learned counsel for the applicant, Sri Sarfaraj Ahamad Siddiquei, learned counsel for the informant and Dr.S.B.Maurya, learned AGA-I, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.65 of 2023, under Sections 363 and 376 IPC, Section 3(2)V SC/ST Act and Section 3/4 POCSO Act, Police Station Bagwala, District Etah during pendency of the trial.
3. FIR of the present case was lodged on 16.3.2023 against the applicant and according to the FIR, on 14.3.2023 applicant enticed away the daughter of the informant aged about 17 years. It is further mentioned in the FIR that till lodging the FIR whereabouts of the daughter of the informant could not be known.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and this fact is evident from the statements of the victim recorded under Sections 161 and 164 Cr.P.C. which completely belies the version of FIR.
5. He further submits that as per FIR which was lodged on 16.3.2023, i.e., after about two days till lodging the FIR victim could not be traced but from the statement of the victim

recorded under Section 161 Cr.P.C. it reflects that when applicant was allegedly committing rape with her then at that time even informant and other witnesses arrived at spot.

6. He further submits that in the statement under Section 164 Cr.P.C. victim narrated all together different story and this fact clearly suggests that applicant has been falsely implicated in the present matter.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 21.3.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that as per school record victim is hardly 14 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 but both the learned counsels could not dispute the fact that in the FIR it has been specifically mentioned that till lodging the FIR victim could not be traced but in her statements recorded under Sections 161 and 164 Cr.P.C. victim categorically stated that when applicant was committing rape with her then informant and other witnesses arrived at spot and thereafter applicant ran away.

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

10. Although from the school record of the victim it reflects that victim was around 14 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 but her statement under Section 161 Cr.P.C. belies the version of FIR in which she

stated that when applicant was committing rape with her, informant and other witnesses arrived at spot but in the FIR which was lodged on 16.3.2023, i.e., after two days from the alleged enticement it has been mentioned that till lodging the FIR victim could not be traced.

11. Further, there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C., therefore, argument advanced by the learned counsel for the applicant that due to enmity applicant has been falsely implicated in the present matter cannot be completely brushed aside at this stage.

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

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

14. Let the applicant-**Rajesh Kumar @ Raja** 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.

15. 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.

16. 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 :- 19.10.2023
SKM