

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44511 of 2023

Applicant :- Vijay Gupta

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

Counsel for Applicant :- Shri Prakash Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Ms. Sushma Soni, Advocate filed his power on behalf of the informant, which is taken on record.

2. Sri Rajrshi Gupta filed his power on behalf of the applicant alongwith supplementary affidavit on behalf of the applicant which is also taken on record.

3. Heard Sri Rajrshi Gupta, learned counsel for the applicant; Ms. Sushma Soni, learned counsel for the informant and Sri Jhamman Ram, learned AGA-I for the State-respondent.

4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 180 of 2023, under Sections 376DA, 342, 506 IPC & Section 5g/5(j)(ii)/6 POCSO Act, Police Station Lalganj, District Mirzapur, during pendency of the trial in the court below.

5. FIR of the present case was lodged on 17.7.2023 against the applicant and co-accused Akash and according to the FIR on 16.7.2023 informant came to know that her daughter aged about 14 years was pregnant and thereafter her miscarriage was caused and she informed the informant that about six months before applicant and co-accused Akash committed rape with her.

6. It is further mentioned in the FIR that the medicine for her miscarriage was provided by co-accused Akash to the victim.

7. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and from the statements of the victim recorded under sections 161 and 164 Cr.P.C. it reflects that she was having love affair with co-accused Akash and she conceived with him and he is the person who

provided pills for miscarriage to her but very casually in her both the statements, she also introduced the applicant by stating that applicant also committed rape with her.

8. He further submitted that actually applicant is a village pradhan and the restaurant Tasty Bite also belongs to him and as physical relationships were developed between victim and co-accused Akash in his restaurant, therefore, only due to this reason, he has been made accused in the present matter.

9. He further submitted that in the statement recorded under section 161 Cr.P.C. victim only stated that applicant also committed rape with her but neither date nor month has been disclosed by her and although in the statement under section 164 Cr.P.C. she stated that applicant committed rape with her in the month of December, 2022 but even from her both the statements implication of applicant appears to be false as in both the statements the entire allegation of sexual exploitation and rape was mainly leveled against the co-accused Akash and very casually applicant has been introduced by stating in general way that he also committed rape with her.

11. He further submitted that in the statement recorded under section 164 Cr.P.C. victim also disclosed the name of one Afridi by stating that he also committed rape with her and therefore, it appears that at different stages, victim narrated different story.

12. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 26.7.2023.

13. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case of gang rape and applicant is the village pradhan and also the owner of the restaurant where rape was committed upon the victim and victim in her both the statements recorded under sections 161 and 164 Cr.P.C. categorically stated that applicant also committed rape with her and it cannot be said that she very casually introduced the applicant in her both the statements.

14. They further submitted that applicant is having criminal history of one case of sections 323, 504 and 506 IPC.

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

16. However, from the record, it reflects that victim is about 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 from her both the statements, it reflects that the main allegation of sexual assault and rape was made against the co-accused Akash and in her both the statements, she categorically stated that she was having affair with Akash and with sexual relationship with Akash, she conceived and Akash is the person who provided pills to her for her miscarriage. Therefore, I find force in the argument advanced by learned counsel for the applicant that very casually victim implicated the applicant too.

17. Further, in the statement recorded under section 161 Cr.P.C. neither date nor month has been disclosed by the victim and she only stated that applicant also committed rape with her and however in the statement recorded under section 164 Cr.P.C. she stated that in the month of December, 2022 applicant committed rape with her but in her statement recorded under section 164 Cr.P.C. also she made allegation mainly against co-accused Akash but casually added applicant too, therefore, at this stage, defence taken by applicant cannot be totally ruled out.

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

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

20. Let the applicant-**Vijay Gupta**, 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.

21. 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.

22. 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

Ankita