

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40300 of 2023

Applicant :- Furkan Ali

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

Counsel for Applicant :- Syed Zafar Abbas Rizvi, Shahabuddin

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Sri Imran Khan, learned AGA submits that as per the report of the Investigating Officer dated 10.10.2023 notice has been served upon the informant but he could not disclose the date of service of notice.
3. It reflects that notice of the instant bail application has been received in the office of learned GA on 28.08.2023, therefore, it appears that notice has been served to the informant well before 10.10.2023.
4. Despite service of notice none appeared on behalf of the informant.
5. Heard Sri Syed Zafar Abbas Rizvi and Shahabuddin, learned counsels for the applicant and Sri Pradeep Kumar, learned AGA for the State.
6. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 385 of 2022, under Sections 363, 366, 376D, 34 IPC and Section 5/6 POCSO Act, Police Station Pakbada, District Moradabad during pendency of the trial.
7. FIR of the present case was lodged against co-accused Mohd. Azeem and according to the FIR co-accused Mohd. Azeem has enticed away the daughter of the informant.
8. Learned counsel for the applicant submitted that totally on the

basis of false allegation only being landlord of co-accused Mohd. Azeem applicant has been made accused in the present matter through the statements of victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. He further submits that the story narrated by the victim appears to be quite improbable. He further submits although as per school record victim was 15 years old but according to her ossification test report, which was conducted after the order passed by this Court, she was about 17 years old.

9. He further submits that co-accused Abdul Bashid and Mohd. Azeem have already been released on bail and case of applicant is even at better footing than them. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 30.05.2023.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that co-accused Abdul Bashid has been released on bail and there was also allegation of rape against co-accused Abdul Bashid and case of applicant is at par him.

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

12. Although, from the school record, it reflects that victim was around 15 years old at the time of incident and her ossification test report shows that she was 17 years old but story narrated by her in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be quite improbable and she made allegation of rape against the applicant and co-accused Abdul Bashid and co-accused Abdul Bashid has already been released on bail, therefore, case of applicant is at par with co-accused Abdul Bashid. Further, applicant is not having any criminal history and in the present matter he is in jail since 30.05.2023.

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

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

15. Let the applicant - **Furkan Ali** 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.

16. 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.

17. 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

AK Pandey