

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45152 of 2019

Applicant :- Om Prakash @ Kataru

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vidya Prakash Singh, Shraavan Kumar Dubey, Yogendra Misra

Counsel for Opposite Party :- G.A., Sandeep Kumar Sharma

Hon'ble Sameer Jain, J.

1. On 13.10.2023 Smt. Archana Singh was appointed as counsel for the applicant from the list of panel Advocates of High Court Legal Services Committee.
2. Heard Smt. Archana Singh, learned counsel appearing on behalf of the applicant from the panel of High Court Legal Services Committee, Sri Sandeep Kumar Sharma, learned counsel for the informant and Sri Ravi Kant Kushwaha, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 40 of 2019, under Sections 376 IPC and Section 3/4 POCSO Act, Police Station Badlapur, District Jaunpur during pendency of the trial.
4. FIR of the present case was lodged on 19.02.2019 by the victim herself and according to the FIR victim is aged about 13 years and on 19.02.2019 when she had gone to ease herself along with her cousin sister then applicant committed rape with her.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and as applicant is neighbor of the informant and some dispute arose between informant and applicant, therefore, he has been made accused in the present matter.
6. She further submits that although victim is hardly 13 years old and she made allegation of rape against the applicant in the FIR as well as in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but during her medical examination doctor did not

find any injury and when statement of the doctor, namely Shilpi Singh was recorded by the Investigating Officer during investigation then she categorically stated that there was no evidence of rape and this fact clearly suggests that on the basis of false allegation of rape, applicant has been roped in the present matter.

7. She further submits that applicant is not having any criminal history and he is about 50 years old and in the present matter he is in jail since 21.02.2019 i.e. for more than four and half years.

8. Per contra, learned AGA as well as learned counsel for the informant although opposed the prayer for bail but could not dispute the fact that according to the doctor there was no evidence of rape and applicant is more than 50 years old person and he is not having any criminal history and he is in jail for more than four and half years.

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

10. Although, from the record it reflects that victim i.e. informant of the case is about 13 years old girl and she made allegation of rape against the applicant in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but from the record it reflects that applicant is more than 50 years old person and when the statement of the doctor Shilpi Singh, who examined the victim, was recorded by the Investigating Officer during investigation then she categorically stated that after medical examination of the victim, she did not find any evidence of rape.

11. Further, applicant is 50 years old person and he is in jail since 21.02.2019 i.e. for more than four and half years.

12. Therefore, considering the facts and circumstances of the case, particularly the statement of the doctor and the fact that applicant is in jail for more than four and half years and he is about 50 years old person, 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 - **Om Prakash @ Kataru** 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.

17. As, from the record, it reflects that applicant was unable to engage a private counsel, therefore, on his request on previous date a counsel from the panel list of High Court Legal Services Committee was appointed on his behalf, therefore, considering this fact, it is directed that applicant shall be released on bail on his personal bond without any sureties.

18. Further, as, it appears that instant matter is of the year 2019 and it also relates to POCSO Act, trial court is directed to conclude the trial of the case within a period of six months from the date of production of certified copy of this order strictly as per provisions of Section 35 of POCSO Act as well as Section 309 Cr.P.C., if there is no legal impediment.

19. Registrar (Compliance) of this Court is directed to communicate this order to the applicant through Jailor concerned as well as to the trial court within 48 hours for necessary compliance.

Order Date :- 30.10.2023

AK Pandey