

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 54517 of 2021

Applicant :- Santosh

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Singh Dahiya, Rajat Kumar Shukla

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. Heard Sri Rajat Kumar Shukla, learned counsel for the applicant and Sri Brijesh Pratap Singh, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 311 of 2020, under Sections 452, 324, 325, 307, 376 IPC, Police Station- Baldeo, District- Mathura, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and two unknown persons and according to the FIR, on 10.10.2020 at about 12:00 a.m. in the night applicant along with his two associates after entering in the house of the informant committed rape with her and on resistance applicant made assault upon her head through sharp edged weapon.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and although, in the FIR informant also made allegation of rape against the applicant and others but when her statement was recorded under Section 161 Cr.P.C. then she did not make such allegation of rape and only allegation of assault has been made against the applicant. He further submitted that however, in her statement recorded under Section 164 Cr.P.C. again she reiterated the version of FIR.
6. He further submitted that actually victim of the case is a major and widow lady and applicant and victim lived together but subsequently some dispute arose between both of them and during

dispute she sustained injuries and it was a case of free fight but only to give serious colour, allegation of rape has also been made by the informant i.e. victim of the case.

7. He further submitted that although initially FIR of the case was lodged under Section 376-D IPC and victim in her statement recorded under Section 164 Cr.P.C. also disclosed the name of two other accused persons alongwith applicant but during investigating their involvement were found false and charge-sheet was filed only against applicant.

8. He further submitted that although, applicant is having previous criminal history of one case of section 376 IPC but in that case, he has already been acquitted and in the present matter, he is in jail since 20.11.2020 that is for almost three years.

9. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case in which alongwith rape, injury was also caused by the applicant and his associates to the victim and victim in the FIR and in her statement recorded under Section 164 Cr.P.C. stated that applicant and other accused persons committed rape with her but could not dispute the fact that allegation of rape has not been levelled by the informant in her statement recorded under Section 161 Cr.P.C. and from perusal of the X-ray report of the victim, it appears that her ulna bone was found fractured and injury sustained by her on her head was not either serious or dangerous to life. He further could not dispute the fact that applicant is in jail for almost three years.

10. I have heard both the parties and perused the record of the case.

11. Although, in the FIR as well as in the statement of victim recorded under Section 164 Cr.P.C, victim made allegation of rape and assault upon the applicant and two others but in her statement recorded under Section 161 Cr.P.C., she did not make any allegation of rape and made only allegation of assault against the applicant.

12. Further, admittedly victim is major and widow lady and FIR of the present case was lodged after seven days and from perusal of the medical report of the victim, it appears that she sustained as many as seven injuries and out seven injuries, two injuries were on her head but from the perusal of her X-ray report, it appears that nothing abnormal was detected with regard to her head injury, however, her ulna bone was found fractured.

13. Further, considering the nature of allegation and material available on record, the defence taken by the applicant cannot be completely ruled out at this stage.

14. However, applicant is having previous criminal history of one case of Section 376-D IPC but in that case, he has already been acquitted.

15. Further, applicant is in jail for last three years and till date not even single prosecution witness could be examined.

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

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

18. Let the applicant- **Santosh** 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.

19. 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.

20. 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 :- 28.10.2023

KK Patel