

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 40841 of 2023

**Applicant :-** Sita

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

**Counsel for Applicant :-** Saurabh Pandey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. As matter also pertains to the provisions of Section 376(3) IPC, therefore, notice was issued to the informant of the case.
2. As per office report dated 10.10.2023 notice has been served to opposite party no.2 through his father.
3. Even learned AGA, for the State, also informed the Court that notice has been served to the informant of the case on 27.8.2023.
4. Despite service of notice, none appeared on behalf of the informant.
5. Heard Sri Saurabh Pandey, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, for the State.
6. The instant bail application has been filed on behalf of the applicant with the prayer to release her on bail in Sessions Case No. 337 of 2022 (arising out of Case Crime No.20 of 2022), under Sections 363, 366A, 376 (3) and 120 IPC and Section 16/17 POCSO Act, Police Station Karma, District Sonbhadra during pendency of the trial.
7. FIR of the present case was lodged against the applicant under Section 363 IPC and according to the FIR, applicant has taken the sister of the informant aged about 15 years but thereafter his sister did not return.

8. Learned counsel for the applicant submits that applicant is lady and although in the FIR there is allegation of enticement against the applicant but from the perusal of the statement of the victim recorded under Section 164 Cr.P.C. it reflects that applicant was friend of the victim and both had gone to Varanasi and thereafter victim herself had gone along with applicant to Prayagraj and stayed there for three months and although in the statement under Section 161 Cr.P.C. victim did not make any allegation of rape but in her statement under Section 164 Cr.P.C. she made allegation of rape and even from her both the statement it could not be reflected that applicant was instrumental in commission of the offence of rape alleged to have been committed by co-accused Fujail.

9. He further submits that co-accused Fujail has already been released on bail by Coordinate Bench of this Court vide order dated 6.4.2023 passed in Criminal Misc.Bail Application No.46884 of 2022 and his bail order has been annexed as Annexure-8 to the affidavit filed in support of the present bail application.

10. He further submits that applicant is not having any previous criminal history and in the present matter she is in jail since 12.4.2022, i.e., for the last more than 1-1/2 years.

11. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

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

13. Considering the fact that applicant is lady and principal accused, who alleged to have committed rape upon the victim, has

already been released on bail by this Court and applicant is in jail for the last more than one and half years, 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-**Sita** 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 her 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 :-** 30.10.2023  
SKM

