

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42084 of 2023

Applicant :- Guddu Prasad

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

Counsel for Applicant :- Bibhuti Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to provisions of Section 376-AB IPC, therefore, notices were issued to informant of the case and as per the office report, notice has been served to the informant through her husband. Sri Pradeep Kumar, learned AGA for the State also apprised the Court that on 12.09.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Bibhuti Narayan Singh, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 247 of 2023, under Sections 376-AB, 323, 504, 506 IPC & 5m/6 POCSO Act, Police Station- Nebuwa Naurangia, District- Kushinagar, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and others on 19.06.2023 and according to the FIR, on 20.05.2023 at about 12:00 p.m. in the noon applicant after entering in the house of the informant committed rape with her minor daughter aged about 15 years.

5. Learned counsel for the applicant submitted that on the basis of false allegation, after about one month from the date of alleged incident of rape, applicant has been made accused in the present matter. He further submitted that actually informant and others made assault upon one America Prasad, who was relative of the applicant and applicant was residing in his house and only due to this dispute, applicant has been made accused in the present matter.

6. He further submitted that although, assault was made by the informant and others on 17.06.2023 but America Prasad, the relative of the applicant, did not immediately lodge the FIR but when he came to know that a false FIR has been lodged against applicant on 19.06.2023 then on 22.06.2023 he moved an application under Section 156(3) Cr.P.C. against informant and others and application moved by the relative of the applicant has been annexed as Annexure No. 4 to the affidavit.

7. He further submitted that although, as per the prosecution, victim was 15 years' old at the time of incident and she made allegation of rape against the applicant but story narrated by her does not appear to be convincing.

8. He further submitted that applicant is not having any criminal history and he is in jail since 20.06.2023.

9. Per contra, learned AGA opposed the prayer for bail and submitted that victim was hardly 15 years' old girl at the time of incident and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but could not dispute the fact that FIR of the present case was lodged after one month.

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

11. However, victim appears to be 15 years' old at the time of incident and she made allegation of rape against the applicant in her both the statements recorded during investigation but FIR of the present case was lodged after one month and from the record, it reflects that there was some dispute between a relative of the applicant and informant, therefore, in my view, applicant is entitled to be released on bail.

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

13. Let the applicant- **Guddu Prasad** 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.

14. 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.

15. 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 :- 1.11.2023

KK Patel