

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41800 of 2023

Applicant :- Atendra

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

Counsel for Applicant :- Shailendra Singh Rathore

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sanjeev Kumar Rathor, Advocate filed his power on behalf of the informant, which is taken on record.
2. Heard Sri Shailendra Singh Rathore, learned counsel for the applicant; Sri Sanjeev Kumar Rathor, learned counsel for the informant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 45 of 2023, under Sections 363, 376 IPC, section 3/4 POCSO Act and section 3(2)(5) SC/ST Act, Police Station Talgram, District Kannauj, during pendency of the trial in the court below.
4. FIR of the present case was lodged against unknown person and according to the FIR, daughter of the informant aged about 15 years had gone somewhere from her home and inspite of her search, she could not be traced.
5. Learned counsel for the applicant submitted that the name of the applicant was surfaced in the instant matter through the statement of the victim recorded under section 161 Cr.P.C.
6. He further submitted that although victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape agaisnt the applicant but there were material contradictions in her both the statements.
7. He further submitted that when victim appeared before the trial court as PW-1 then she did not support the prosecution case and has been declared hostile and her statement recorded by the trial court is annexed as annexure-7 to the affidavit.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 20.3.2023.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that there were material contradictions in the statements of the victim recorded under sections 161 and 164 Cr.P.C. and when victim appeared before the trial court, then she has been declared hostile.

10. Learned counsel for the informant also conceded the fact that victim did not support the prosecution case before the trial court and neither victim nor informant is having any objection, if applicant be enlarged on bail.

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

12. Considering the fact that victim during trial has been declared hostile and neither victim nor informant is having any objection, if, applicant is enlarged on bail, 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-**Atendra**, 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.

Order Date :- 18.10.2023

Ankita