

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43525 of 2023

Applicant :- Subhash

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Tripathi, Pankaj Pandey

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 Saurabh Tripathi, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 213 of 2023, under Sections 452, 506, 376 IPC, Police Station- Nigohi, District- Shahjahanpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and one unknown person and according to the FIR, on 08.11.2022 applicant and his unknown associate committed rape with the informant. It is further mentioned in the FIR that earlier also applicant has committed wrong with the informant.
5. Learned counsel for the applicant submitted that applicant is innocent and entire allegation made against him is totally false and baseless and even from the FIR and from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., it appears that entire story narrated by her is totally false and no reliance can be placed on such version.
6. He further submitted that informant is admittedly major and married lady and it is hard to believe that against her wishes, applicant can commit rape with her. He further submitted that FIR of the present case was lodged on 10.05.2023 on the application under Section 156(3) Cr.P.C. with regard to incident dated 08.11.2022. He further urged, on 17.10.2022 a FIR was also lodged by the informant against the applicant under Sections 452,

354, 323, 504 IPC, which has been annexed as Annexure No. 3 to the affidavit and this fact clearly suggests that informant is continuously lodging false FIRs against the applicant.

7. He further submitted that applicant is not having any criminal history and he is in jail since 06.07.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that victim in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant but could not dispute the fact that victim is a major and married lady and earlier also in the months of October, 2022, she lodged a FIR against the applicant under Section 452 IPC.

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

10. Although, there is allegation of rape against the applicant in the FIR as well as in both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but story narrated by the victim does not appear to be convincing and admittedly she is major and married lady.

11. Further, earlier also victim lodged a FIR against the applicant under Section 452 IPC in the month of October, 2022, therefore, argument advanced by learned counsel for the applicant that due to previous enmity, applicant has been roped in the present matter, cannot be completely ruled out at this stage.

12. Further, applicant is not having any criminal history and he is in jail since 06.07.2023.

13. Therefore, considering the facts and circumstances of the case discussed above, 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- **Subhash** 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.

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 :- 12.10.2023

KK Patel