

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50586 of 2022

Applicant :- Samshul Haq

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

Counsel for Applicant :- Abhishek Kumar Saroj,Shahnawaz Khan

Counsel for Opposite Party :- G.A.,Syed Sajjad Husain

Hon'ble Sameer Jain,J.

1. None appeared on behalf of the informant even in the revised call. However, learned AGA for the State-respondent is present.
2. Heard Sri Azad Khan, Advocate holding brief of Sri Shahnawaz Khan, learned counsel for the applicant and Sri Rajiv 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. 114 of 2022, under Sections 376 IPC & Section 5L, 5M/6 of the POCSO Act, Police Station Sonauli, District Maharajganj, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant and according to the FIR on 8.8.2022, informant has sent her daughter towards market and after return, she informed that applicant committed wrong against her and also gave her Rs. 30/-.
5. Learned counsel for the applicant submitted that on the basis of vague allegation, applicant has been made accused in the present matter only due to village party bandi.
6. He further submitted that victim in her statement recorded under section 161 Cr.P.C. stated that applicant committed wrong against her but in the statement recorded under section 164 Cr.P.C. she however initially stated that applicant committed wrong against her but further stated that applicant touched her shoulder and also gave her Rs. 10/-.
7. He further submitted that on the basis of such allegation, at this stage, it cannot be said that applicant committed rape with the victim.

8. He further submitted that during medical examination of the victim however doctor found redness of hymen but merely on the basis of redness of hymen it cannot be said that applicant committed rape upon the victim.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 8.8.2022 i.e. for last more than a year.

10. Per contra, learned AGA opposed the prayer for bail and submitted that victim is hardly 8 years old girl and she in her both the statements recorded under sections 161 and 164 Cr.P.C. stated that applicant committed wrong against her and her medical report also suggests that her hymen was torn and there was redness and therefore, applicant should not be released on bail.

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

12. From the perusal of the record, it reveals that victim is 8 years old girl and she however in her both the statements recorded under sections 161 and 164 Cr.P.C. stated that applicant committed wrong against her but in the statement recorded under section 164 Cr.P.C. she further stated that applicant touched her shoulder and thereafter gave Rs. 30/- to her and therefore, I find force in the argument advanced by learned counsel for the applicant that merely on the basis of such statement of the victim at this stage it cannot be said that applicant committed rape upon her.

13. Further, however, as per medical report of the victim her hymen was torn and also redness was found on her hymen but merely on the basis of these facts, at this stage, it cannot be said that applicant committed rape upon her as due to number of reasons redness may be found on the hymen of the child and even hymen of the child may also be found torn and doctor did not note fresh tear.

14. Further, applicant is having no criminal history and he is in jail in the present matter since 8.8.2022 i.e. for last more than a year.

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

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

17. Let the applicant-**Samshul Haq**, 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.

18. 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.

19. 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 :- 12.12.2023

Ankita