

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42706 of 2023

Applicant :- Shahid

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

Counsel for Applicant :- Yogendra Singh

Counsel for Opposite Party :- G.A.,Manisha Chaturvedi

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of SC/ST Act, therefore, notices were issued to the informant of the case on 9.10.2023.
2. However, as per office report dated 30.10.2023, service report is still awaited but Sri Jhamman Ram, learned AGA-I, for the State, apprised the Court that notice has already been served to the informant of the case on 27.9.2023.
3. In view of the judgment of this Court in the case of Ajit Chaudhory Vs. State of U.P. passed in Criminal Misc. Bail Application No.45784 of 2020, if notice has been served to the informant by the State then it is sufficient one.
4. As despite service of notice, none appeared on behalf of the informant, therefore, the instant bail application is being heard.
5. Heard Sri Yogendra Singh, learned counsel for the applicant, Ms. Manisha Chaturvedi, learned counsel appearing for the High Court Legal Services Committee 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 him on bail in Case Crime No.0111 of 2023, under Sections 363, 366,328, 376(2)(n), 323,504 and 506 IPC, Section 6 POCSO Act and Section 3(1) (Da) (Dha), 3(2)(Va), 3(2)(v) SC/ST Act, Police Station Maudaha, District Hamirpur during pendency of the trial.

7. FIR of the present case was lodged on 16.3.2023 against the applicant and one unknown person and according to the FIR, applicant after providing some intoxicated drink to the minor daughter of the informant committed rape with her and thereafter prepared her obscene video and under the threat to viral the same he several times committed rape with the daughter of the informant. It is further mentioned in the FIR that applicant also threatened the victim to change her religion and also used caste related words. It is also mentioned in the FIR that on 13.3.2023 applicant along with his one unknown associate abducted the daughter of the informant and after the intervention of local police he managed to escape.

8. Learned counsel for the applicant submits that on the basis of vague allegation applicant has been made accused in the present matter and neither in the FIR nor in the statement of the victim recorded under Sections 161 and 164 Cr.P.C. any specific date of alleged rape has been mentioned and on the basis of vague allegation applicant has been made accused in the present matter for serious offences like rape.

9. He further submits that actually applicant is the neighbor of the informant and some dispute arose between both of them and only due to this reason applicant has been made accused in the present matter.

10. He further submits that applicant is in jail in the present matter since 21.3.2023, i.e., for the last more than six months.

11. Per contra, learned AGA as well as learned counsel for the High Court Legal Services Committee opposed the prayer for bail and submitted that victim was hardly 13 years old girl and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant committed rape with her. But,

both the learned counsels could not dispute the fact that even according to victim, rape was committed a month before and she did not disclose even the date and time of the crime alleged to have been committed by applicant.

12. Learned AGA further pointed out that applicant is having criminal history of Section 354 IPC but he fairly conceded that it is a case of the year 2019.

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

14. Although from the record it reflects that victim was about 13 years old girl and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but it appears from the record that vague allegation of rape has been levelled against the applicant and neither in the FIR nor in both the statements of the victim any date and time of alleged rape was mentioned.

15. Further, according to the victim rape was committed by applicant about a month before and, therefore, it appears that she kept mum herself for more than a month.

16. However, as per the instructions received by learned AGA, applicant is also having criminal history of Section 354 IPC but learned AGA further pointed out that it was a case of the year 2019.

17. Further, in my view, if otherwise case of applicant is made out then on the basis of criminal history bail application of an accused should not be dismissed.

18. Further, applicant is in jail in the present matter since March, 2023, i.e., for the last more than six months.

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

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

21. Let the applicant-**Shahid** 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.

22. 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.

23. 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 :- 31.10.2023
SKM