

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50137 of 2022

Applicant :- Omveer Pal

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

Counsel for Applicant :- Rohit Kumar Pandey, Ram Shiromani Yadav

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. Notice was issued to the informant but despite service of notice none appeared on behalf of the the informant.
3. Heard Sri Vinod Kumar Yadav, Advocate holding brief of Sri Ram Shiromani Yadav, learned counsel for the applicant and Sri Santosh Kumar Nigam, learned Brief Holder for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 167 of 2022, under Sections 363, 366, 376 IPC and 3/4 POCSO Act, Police Station Hayat Nagar, District Sambhal, during pendency of the trial in the court below.
5. FIR of the present case was lodged against the applicant and others and according to the FIR, applicant and other accused persons enticed away the daughter of the informant aged about 17 years.
6. It is further mentioned in the FIR that applicant and other accused persons has also taken the jewelries, Rs. One lakh and fifty thousands from the house.
7. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and baseless and there are material contradictions in the statements of the victim recorded under sections 161 and 164 Cr.P.C.
8. He further submitted that in the statement recorded under section 161 Cr.P.C. victim categorically stated that applicant did not commit rape with her and only stated that applicant enticed

her away but when her statement under section 164 Cr.P.C. was recorded then she stated that applicant and co-accused Munendra abducted her and applicant committed rape with her.

9. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 14.8.2022 i.e. for more than a year and trial of the case could not be concluded till date.

10. He further submits, however, victim has already examined by the trial court and therefore, there is no chance of any tampering with the prosecution evidence.

11. Per contra, learned AGA opposed the prayer for bail and submitted that victim at the time of incident was hardly 17 years old and she in her statement recorded under section 164 Cr.P.C. made allegation of rape against the applicant but could not dispute the fact that in her statement recorded under section 161 Cr.P.C. victim did not make any allegation of rape and applicant is having no criminal history apart from the present case and he is in jail in the present matter for more than a year and victim has already examined by the trial court.

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

13. Although from the perusal of the record, it appears that victim was around 17 years old and she made allegation of abduction of rape against the applicant in her statement recorded under section 164 Cr.P.C. but when her statement was earlier recorded under section 161 Cr.P.C. then she although made allegation of enticement against the applicant but did not make any allegation of rape against him.

14. Further, applicant is not having any criminal history and he is in jail in the present matter since 14.8.2022 i.e. for more than a year and it appears that victim has already appeared before the trial court and therefore, I find force in the argument advanced by learned counsel for the applicant that there is no chance of any tampering with the prosecution evidence.

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-**Omveer Pal**, 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 :- 28.10.2023

Ankita