

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48291 of 2023

Applicant :- Neelu

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

Counsel for Applicant :- Rajeev Kumar Saxena

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Santosh Nigam, learned AGA apprised the Court that on 4.10.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Rajeev Kumar Saxena, learned counsel for the applicant and Sri Santosh Nigam, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 355 of 2015, under Sections 363, 366, 376 IPC & Section 3/4 POCSO Act, Police Station Bela, District Auraiya, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 16.10.2015 against unknown person and according to the FIR on 9.10.2015 the daughter of the informant aged about 14 years had gone to home from the field but did not reach at her home.
5. Learned counsel for the applicant submitted that although FIR of the present case was lodged in the year 2015 but twice final report has been submitted in this case as victim could not be recovered but final report could not be accepted and investigation was pending.
6. He further submitted that when in the year 2020 i.e. after five years informant came to know that victim i.e. his daughter is living with the applicant as his wife then after that applicant was arrested on 3.4.2020 and since then he is in jail.
7. He further submitted that unfortunately victim of the case is no more and she has died due to her illness and in the present case, allegation against the applicant is that when victim was minor then applicant enticed her away.
8. He further submitted that even at the time of incident victim was major and from her medical prescription it shows that in the year 2018 she was 25 years old.
9. He further submitted that applicant is in jail in the present matter

since 3.4.2020 i.e. for more than three and half years and he is having no previous criminal history and therefore, he should be released on bail.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

12. It is a peculiar case in which applicant was arrested after five years and victim i.e. daughter of the informant was the wife of the applicant and with the wedlock of the applicant and victim one child was also born but unfortunately, due to tuberculosis, it appears that victim i.e. wife of the applicant i.e. daughter of the informant has died and applicant is in jail in the present matter since 3.4.2020 i.e. for more than three and half years. It also reflects that during investigation of the present matter after lodging the FIR in the year 2019 twice final report was submitted and applicant was arrested after five years. Further applicant is having no criminal history to his credit.

13. Therefore, considering the facts and circumstances of the case, discussed above, particularly the fact that applicant is in jail for more than three and half years, 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-**Neelu** 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 :- 9.11.2023

Ankita