

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43909 of 2023

Applicant :- Mohd. Talib

Opposite Party :- State of U.P.

Counsel for Applicant :- Syed Faiz Hasnain, Mohd. Hasham, Syed Riyaz Askari

Counsel for Opposite Party :- G.A., Rakesh Kumar Verma

Hon'ble Sameer Jain, J.

1. Heard Sri Sayed Faiz Hasnain, learned counsel for the applicant, Sri Rakesh Kumar Verma, learned counsel for the informant and Sri Manoj Kumar Singh, learned brief holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 172 of 2023, under Sections 452, 376, 506 IPC, Police Station- Baniyather, District- Sambhal, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 30.06.2023 against applicant and according to the FIR, on 19.05.2023 applicant committed rape with the informant aged about 19 years and thereafter he promised to perform marriage with her but subsequently he refused to perform marriage with her.
4. Learned counsel for the applicant submitted that applicant is the cousin brother (*mausara bhai*) of the victim and actually marriage of the applicant and victim was verbally settled but unfortunately due to some dispute arose between both the sides, it could not be solemnized and only due to this reason, FIR of the present case was lodged. He further submitted that admittedly victim is major girl and FIR of the present case was lodged after more than a month.
5. He further submitted that applicant is not having any criminal history and he is in jail since 04.07.2023.
6. Per contra, learned AGA as well as learned counsel for the informant 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 both the counsels could not dispute the fact that victim is major girl and FIR of the present case was lodged after more than a month.

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

8. Considered the fact that victim is major girl and FIR of the present case was lodged after more than a month, in my view, applicant is entitled to be released on bail.

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

10. Let the applicant- **Mohd. Talib** 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.

11. 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.

12. 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 :- 16.10.2023

KK Patel