

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43458 of 2023

Applicant :- Shahanshah

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

Counsel for Applicant :- Jitendra Singh

Counsel for Opposite Party :- G.A.,Ankit Singh

Hon'ble Sameer Jain,J.

1. Heard Sri Jitendra Singh, learned counsel for the applicant, Sri Ankit Singh, learned counsel for the informant and Sri Jhamman Ram, learned AGA-I for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 43 of 2023, under Sections 376(3), 120-B, 506 IPC & 5(G)/6 POCSO Act, Police Station-Satti, District- Kanpur Dehat, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 09.06.2023 under Sections 354-A, 294, 504, 506 IPC, 7/8 POCSO Act against Raja (non applicant) and according to the FIR, daughter of the informant aged about 17 years was the student of Class-IX and nominated accused Raja teased her while she was returning home from the school.
4. Learned counsel for the applicant submitted that applicant was neither named in the FIR nor victim in her statement recorded under Section 161 Cr.P.C. disclosed his name. He further submitted that for the first time, name of the applicant was surfaced in the present matter in the statement of the victim recorded under Section 164 Cr.P.C.
5. He further submitted that applicant is the brother of the nominated accused Raja and only due to this reason, at subsequent stage, he has been made accused in the present matter. He further submitted that applicant was not having any concern with the relationship of the victim and his brother Raja.
6. He further submitted that applicant is not having any criminal history and he is in jail since 09.06.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim was hardly 14-15 years' old girl and she made allegation of rape against the applicant also in her statement recorded under Section 164 Cr.P.C. but both the counsels could not dispute the fact that victim in her statement recorded under Section 161 Cr.P.C. did not even disclose the name of the applicant.

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

9. However, from the school record, it reflects that victim, who was hardly 14-15 years' old, made allegation of rape against the applicant in her statement recorded under Section 164 Cr.P.C. but earlier when her statement was recorded under Section 161 Cr.P.C. then she did not even disclose the name of the applicant and, therefore, there are material contradictions in the both the statements of the victim recorded during investigation.

10. Further, applicant is not having any criminal history and he is in jail since 09.06.2023.

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

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

13. Let the applicant- **Shahanshah** 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.

14. 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.

15. 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

KK Patel