

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43367 of 2023

Applicant :- Ram Kishor

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

Counsel for Applicant :- Alok Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to the provisions of Section 376 (3) IPC, therefore, notices were issued to the informant of the case.
2. As per office report dated 31.10.2023, service report is still awaited.
3. Dr. S.B.Maurya, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 12.10.2023.
4. In view of the judgment of this Court in the case of **Ajeet Chaudhary Vs. State of U.P. and another** passed in Criminal Misc. Bail Application No.45784 of 2020, if notice has been served to the informant/victim by the State then there is even no need to issue separate notice by the Court to him/her.
5. As, despite service of notice, none appeared on behalf of the informant, therefore, instant bail application is being heard.
6. Heard Sri Alok Sharma, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
7. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.857 of 2022, under Sections 363, 366 and 376 (3)IPC and Section 3/4(2) POCSO Act, Police Station Banda, District Shahjahanpur during pendency of the trial.

8. FIR of the present case was lodged against Premwati and her relative and according to the FIR, nominated accused Premwati enticed away the grand-daughter of the informant with the help of her relative and subsequently in the afternoon the relative of co-accused Premwati left the victim in the state of intoxication at her home.

9. Learned counsel for the applicant submits that applicant was not named in the FIR but when the statement of the victim recorded under Section 161 Cr.P.C., then he was made accused in the present matter.

10. He further submits that although victim in her statement recorded under Section 161 Cr.P.C. disclosed the name of applicant but she stated that on her own she had gone along with applicant and thereafter applicant left her in the field and ran away and except this there is no further allegation against the applicant in her statement recorded under Section 161 Cr.P.C. but when her statement under Section 164 Cr.P.C. was recorded then she although stated that she had gone along with applicant in the house of her maternal uncle but she also stated that applicant provided her a banana and after consuming the same, she lost her conscious and thereafter applicant committed rape with her.

11. He further submits that there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and it clearly suggests that subsequently under the instigation of her parents victim stated against the applicant in her statement under Section 164 Cr.P.C.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since

27.1.2023, i.e., for the last more than 10 months.

13. Per contra, learned AGA opposed the prayer for bail and submits that the age of the victim was around 14-15 years and she in her statement recorded under Section 164 Cr.P.C. categorically stated that applicant committed rape with her but he could not dispute the fact that no such allegation of rape was made by the victim against the applicant in her previous statement under Section 161 Cr.P.C

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

15. However, from the record it reflects that victim was around 15 years old but there are material contradictions in her both the statements recorded under Sections 161 and 164 Cr.P.C.

16. Victim in her statement under Section 161 Cr.P.C. stated that she on her own had gone along with applicant at the house of her maternal uncle and thereafter she stayed there upto whole night and in the morning applicant had left her in the field but when her statement under Section 164 Cr.P.C. was recorded then she although stated that she had gone along with applicant upto the house of her maternal uncle but further added that applicant provided her a banana and after consuming the same she fainted and thereafter applicant committed rape with her.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since January, 2023.

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

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

20. Let the applicant-**Ram Kishor** 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.

21. 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.

22. 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 :- 1.11.2023
SKM