

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46888 of 2023

Applicant :- Pawan Vishwakarma

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

Counsel for Applicant :- Rajesh Kumar,Ramesh Chandra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Nitesh Vishwakarma, learned Advocate has filed his power on behalf of the informant, which is taken on record.
2. Heard Sri Ramesh Chandra Yadav, learned counsel for the applicant, Sri Nitesh Vishwakarma, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.
3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.93 of 2023, under Section 376 A,B IPC and Section 5M/6 POCSO Act, Police Station Atraoliya, District Azamgarh during pendency of the trial.
4. FIR of the present case was lodged on 2.4.2023 against the applicant and according to the FIR, applicant is the father of the informant and after death of her mother applicant number of times sexually exploited her , i.e., his daughter. It is further mentioned in the FIR that when informant made complaint from her maternal grandfather then he has taken her at his house and since then she is residing in the house of her maternal grandfather.
5. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and on the basis of wild allegation of rape father of the victim has made accused in the present matter by the victim, who is minor girl aged about hardly 13-14 years old.

6. He further submits that actually victim, i.e., informant of the case is the daughter of applicant from his first wife and after the death of his first wife applicant performed marriage with the real sister of his late wife and after that applicant had to go to Bombay for his livelihood and in the meantime when applicant was in Bombay his second wife along with his children including the informant had gone along with one Manoj and when applicant came to know about this fact then he returned back and tried to take back his wife and children but his wife refused to go with him and thereafter on 6.2.2023 applicant filed a criminal complaint against Manoj Vishwakarma and his second wife Pratibha Devi as Complaint Case No. 134 of 2023 and when Manoj Vishwakarma and Pratibha Devi came to know about this fact then they instigated the daughter of the informant, who was minor and under the pressure and on their instigation FIR of the present case was lodged by her against the applicant on 2.4.2023.

7. He further submits that even from the FIR and the statement of the victim it appears that she is making totally false allegation and as she was minor, therefore, possibility cannot be ruled out at this stage that due to strained relationship between husband and wife, on the instigation of her step mother i.e. second wife of applicant, informant lodged FIR of the present case.

8. He further submits that applicant is not having any previous criminal history and he is in jail in the present matter since 29.4.2023.

9. Per contra learned AGA as well as learned counsel for the informant vehemently opposed the prayer for bail and submitted that applicant is the real father of the victim, i.e., informant of the case and allegations are serious against him and his minor daughter made allegation of sexual exploitation against him and

she in her both the statements recorded during investigation also reiterated the version of the FIR and, therefore, applicant should not be released on bail.

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

11. It is a case in which allegation of rape has been levelled by a minor daughter against her father and from the perusal of the FIR it appears that after the death of her mother applicant, the father of the informant, committed rape with her in May, 2022 and thereafter number of times he sexually exploited her and when she made complaint to her maternal grandfather then he had taken her from the house of applicant and similar story of allegation of rape has been levelled by the victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. but from annexure-1 to the affidavit it appears that before FIR of the instant case applicant has filed a criminal complaint on 6.2.2023 against one Manoj Vishwakarma and his second wife by alleging, when applicant was in Bombay then in his absence his wife (second wife), the 'mausi' of the informant had gone along with co-accused Manoj Vishwakarma and she had also taken the children of applicant including the informant and when applicant after returning from Bombay tried to take them back then his wife refused to return at her matrimonial home and, therefore, it appears from the complaint dated 6.2.2023 that relationship between husband and wife was not cordial one and as per the complaint even informant was not residing along with applicant.

12. Further, during the course of argument, learned AGA produced the entire case diary of the case and from its perusal it appears that during investigation Investigating Officer recorded the statement of Ravindra Kumar Vishwakarma, the maternal grandfather of the

victim, and from his statement it also reflects that relationship between husband and wife was not cordial one and wife of applicant along with children including the informant resides in his house however he further stated in his statement to the Investigating Officer that informant informed him that in the year 2022 applicant committed rape with her and, therefore, it appears that the statement of grandfather of the victim belies the story narrated by victim in the FIR as in the FIR she stated that after the complaint with regard to sexual exploitation of her father, i.e., applicant her maternal grandfather had taken her to his house.

13. Therefore, considering the facts and circumstances of the case discussed above, particularly the complaint dated 6.2.2023 and the statement of maternal grandfather of the informant, 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-**Pawan Vishwakarma** 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 :- 3.11.2023

SKM