

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43206 of 2023

Applicant :- Nitin Urf Abhai

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajai Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Ajai Kumar Singh, learned counsel for the applicant and Sri Rajiv Dhar Dwivedi, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 381 of 2023, under Sections 376, 366 IPC, Police Station Chakeri, District Kanpur Nagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant and co-accused Ankit and according to the FIR, applicant alongwith his associate gave the lift to the daughter of the informant on the scooty and thereafter applicant committed rape with her.
4. Learned counsel for the applicant submitted that applicant was named in the FIR on the basis of the information furnished by the victim to the informant but when the statements of the victim were recorded under sections 161 and 164 Cr.PC., she did not even disclose the name of the applicant and during investigation, the identification parade was not conducted.
5. He further submitted that applicant was having enmity with the informant i.e. mother of the victim with regard to some payment, therefore, he has been made accused in the present matter by her.
6. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 16.7.2023.
7. Per contra, learned AGA opposed the prayer for bail and submitted that applicant was named in the FIR but could not dispute the fact that he was named on the basis of information furnished by the victim but victim in her both the statements

recorded under sections 161 and 164 Cr.P.C. did not even disclose the name of the applicant.

8. He further could not dispute the fact that even during investigation, in the present matter, test identification parade could not be conducted.

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

10. Although applicant was named in the FIR but it appears from the perusal of the FIR that he was named on the basis of information furnished by the victim but victim in her both the statements recorded under sections 161 and 164 Cr.P.C. did not even disclose the name of anybody including applicant and during investigation, test identification parade also could not be conducted.

11. Further, applicant is having no criminal history and he is in jail in the present matter since 16.7.2023

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

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

14. Let the applicant-**Nitin Urf Abhai**, 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.

15. 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.

16. 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 :- 26.10.2023

Ankita