

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43406 of 2023

Applicant :- Ankaj Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Amar Nath Vishwakarma, Kuldeep Johri

Counsel for Opposite Party :- G.A., Manish Kumar Dwivedi

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Ankit Singh, Advocate, holding brief of Sri Kuldeep Johri, learned counsel for the applicant, Sri Manish Kumar Dwivedi, learned counsel for the informant and Sri Pradeep Kumar, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 372 of 2020, under Sections 376, 354(Ga), 504, 506 IPC & 67 I.T. Act, Police Station- Sarai Akil, District- Kaushambi, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 01.09.2020 against applicant and one Bhola Mishra and according to the FIR, applicant used to harass the informant of the case by sending obscene messages to her and also used to tease her.
5. Learned counsel for the applicant submitted that in the FIR there was only allegation of harassment against the applicant and there no allegation of rape but when the statement of the victim was recorded under Section 161 Cr.P.C. then she started making allegation of rape against the applicant and this fact clearly suggests that victim is not a reliable witness.
6. He further submitted that victim admittedly is major girl aged about 19 years and victim and applicant both were having love affair and when this fact was revealed to the family members of the victim then FIR of the present case was lodged. He further submitted that under pressure of her parents, victim made allegation of rape against the applicant. He further submitted that even story narrated by the victim in her both the statements

recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. does not appear to be convincing.

7. He further submitted that however, FIR was lodged in the year 2020 but applicant surrendered before the court concerned in September, 2023 i.e. after three years and earlier due to health issues of his parents, he could not appear before the court concerned and this fact is evident from the supplementary affidavit filed today.

8. He further submitted that applicant is not having any criminal history and he is in jail since September, 2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that it is a case in which, a girl has been harassed in such a manner that it is difficult for her to live daily life and girl i.e. victim of the case in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. categorically stated against the applicant and even from the FIR, it reflects that applicant badly harassed the victim.

10. Learned counsel for the informant further submitted that applicant is an absconder and after issuing of processes under Sections 82/83 Cr.P.C., he appeared before the court concerned after about three year, however, he has taken a plea that due to illness of his parents, he earlier could not appear before the court concerned but this fact is totally false and baseless as after the lodgement of the FIR, several times he appeared before this Court in different jurisdiction including jurisdiction under Sections 482 Cr.P.C. and 483 Cr.P.C. and by concealing material facts of the cases, he tried to obtain order but when all his efforts were in vain then he had to appear before the court concerned after initiation of processes under Sections 82/83 Cr.P.C., therefore, considering the conduct of the applicant and statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., applicant should not be released on bail.

11. I have heard both the parties and perused the record of the case.

12. However, from the record, it reflects that victim is major girl aged about 19 years but she in her both the statements recorded during investigation made allegation of rape and sexual exploitation against the applicant in detail manner. Further, however, she did not make any allegation of rape and sexual exploitation against the applicant in the FIR but FIR of a criminal case is not an encyclopaedia and even from its perusal, it appears

that applicant severely harassed the victim.

13. Further, from the record, it also reflects, FIR of the present case was lodged on 01.09.2020 and applicant surrendered before the court concerned on 26.09.2023 i.e. after three years. From the record, it further reflects that when processes under Sections 82/83 Cr.P.C. were issued against him then he had to appear before the court concerned, therefore, he appears to be an absconder. However, by way of supplementary affidavit applicant tried to explain his abscondance and stated that due to illness of his parent, earlier, he could not appear before the court concerned but from the perusal of the medical documents of the parents of the applicant, it could not be reflected that they were having such nature of illness, on the basis of which, applicant could not appear before the court concerned.

14. Further, from the orders passed by this Court, which were produced by learned counsel for the informant during the course of argument, it appears that in the year 2020, 2021 and 2022 applicant several times knocked the door of this Court in different jurisdictions and, therefore, the explanation provided by the applicant in the supplementary affidavit with regard to his abscondance of more than three years, prima facie, appears to be false.

15. Therefore, considering the conduct of the applicant and allegation levelled against him, in my view, he is not entitled to be released on bail.

16. Accordingly, the instant bail application is **rejected**.

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 :- 29.11.2023

KK Patel