

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43721 of 2023

Applicant :- Sanoj Kumar

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

Counsel for Applicant :- Manoj Kumar Patel

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Jhamman Ram, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 10.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Manoj Kumar Patel, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.02 of 2017, under Sections 363, 366, 376-D and 342 IPC and Section 5/6 POCSO Act, Police Station Thathiya, District Kannauj pendency of the trial.
5. In the instant matter a complaint has been filed by opposite party no.2 against the applicant and three others on 30.8.2017 and according to complaint, co-accused Manoj Kumar forcibly solemnized the marriage of the complainant with the applicant and thereafter both applicant and his brother co-accused Manoj Kumar committed rape with her in the absence of each other.
6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and even from its face value complaint of the present case appears to be

totally false and frivolous.

7. He further submits that after summoning order passed by the court concerned, applicant and co-accused Manoj Kumar preferred Criminal Misc. Application 482 No.14386 of 2019 and on 15.4.2019 this Court was pleased to stay the further proceedings of complaint case till the next date of listing but unfortunately the stay order could not be extended and in view of the law laid down by the Apex Court in the case of **Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation (2018) 16 SCC 299** NBW were issued against the applicant and thereafter applicant had to surrender before the Court, on 11.9.2023 and since then he is in jail.

8. He further submits that co-accused Manoj Kumar has already been granted bail by Coordinate Bench of this Court vide order dated 25.9.2023 and case of applicant is even on better footing than him and bail order of co-accused Manoj Kumar has been annexed as Annexure-11 to the affidavit filed in support of the present bail application.

9. He further submits that even as per allegation marriage of applicant was performed with the complainant and if after marriage applicant made physical relationship with her then it cannot be amounted to rape.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 11.9.2023.

12. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

13. I have heard learned counsels for the parties and perused the record of the case.

14. From the perusal of the record it reflects that applicant along with his brother co-accused Manoj Kumar was summoned in a complaint case and after summoning order when he challenged the proceedings of the complaint case before this Court then proceedings of the complaint case was stayed but subsequently the stay order granted by this Court could not be extended and, therefore, NBW was issued against him and he had to surrender. The application under Section 482 Cr.P.C. filed by applicant and co-accused Manoj Kumar is still pending.

15. Further, even as per allegation marriage of applicant was performed with the complainant and therefore, I find force in the argument advanced by the learned counsel for the applicant that being husband of the complainant it cannot be said that applicant committed rape with her.

16. Further, however, from the complaint it appears that complainant at the time of incident was around 16 years old but the story narrated by her does not inspire any confidence.

17. Further, bail application of co-accused Manoj Kumar has been allowed by Coordinate Bench of this Court and the case of applicant is on better footing than him.

18. Further, applicant is not having any previous criminal history and he is in jail in the present matter since 11.9.2023.

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

20. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application is **allowed**.

21. Let the applicant-**Sanoj Kumar** 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.

22. 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.

23. 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 :- 28.10.2023

SKM