

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45279 of 2023

Applicant :- Rajat Kumar

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

Counsel for Applicant :- Anuj Bajpai

Counsel for Opposite Party :- G.A., Satendra Singh

Hon'ble Sameer Jain, J.

1. Heard Sri Anuj Bajpai, learned counsel for the applicant, Sri Satendra Singh, learned counsel for the opposite party nos. 2 to 4 and Sri Santosh Nigam, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 0236 of 2023, under Sections 352, 354, 376, 504 IPC, Section 3/4 & 7/8 POCSO Act and Section 3(2) 5 SC/ST Act, Police Station Banda, District Shahjahanpur during pendency of the trial.

3. FIR of the present case was lodged on 14.04.2023 against applicant under Sections 354, 352, 504 IPC and Section 7/8 POCSO Act and according to the FIR on 01.02.2023 applicant made sexual assault upon the daughter of the informant aged about 16 years.

4. Learned counsel for the applicant submitted that FIR of the present case was lodged after more than two months and this fact itself shows that applicant has falsely been implicated in the present matter.

5. He further submits that however as per school record victim was about 16 years old and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant but as FIR of the present case was lodged after two months, therefore, no reliance can be placed on her version.

6. He further submits that in the statement recorded under Section 161 Cr.P.C. victim stated that applicant committed rape upon her on 01.02.2023 while in the statement recorded under Section 164 Cr.P.C. she stated that applicant committed rape upon her on

08.02.2023, therefore, there are discrepancies even in the date of alleged incident of rape.

7. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 15.06.2023 i.e. for almost six months.

8. Per contra, learned AGA as well as learned counsel for the opposite party nos. 2 to 4 opposed the prayer for bail and submitted that victim is hardly 16 years old girl and she made allegation of rape in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. against the applicant but both the counsels could not dispute the fact that FIR of the present case was lodged after two months and victim in her statement recorded under Section 161 Cr.P.C. stated that rape was committed on 01.02.2023 and in her statement recorded under Section 164 Cr.P.C. she disclosed that rape was committed by the applicant on 08.02.2023.

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

10. However, from the record, it reflects that victim is 16 years old girl and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but FIR of the present case was lodged after two months and no explanation was given with regard to such inordinate delay in lodging the FIR.

11. Further, victim in her statement recorded under Section 161 Cr.P.C. stated that on 01.02.2023 applicant committed rape upon her while in her statement recorded under Section 164 Cr.P.C. she stated that applicant committed rape upon her on 08.02.2023, therefore, there are discrepancies with regard to date of alleged incident of rape.

12. Further, applicant is not having any criminal history and in the present matter he is in jail since 15.06.2023 i.e. for last almost six months.

13. Therefore, considering the facts and circumstances of the case discussed above, 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 - **Rajat 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.

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 :- 1.12.2023

AK Pandey