

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44016 of 2023

Applicant :- Yusuf

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

Counsel for Applicant :- Sundeep Shukla

Counsel for Opposite Party :- G.A., Amar Jeet Upadhyay

Hon'ble Sameer Jain, J.

1. Heard Sri Sundeep Shukla, learned counsel for the applicant, Sri Amar Jeet Upadhyay, learned counsel for the informant and Sri Imran Khan, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 377 of 2023, under Sections 354, 506, 452, 427, 376(3) IPC & 3/4(2) POCSO Act, Police Station- Lisari Gate, District- Meerut, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 09.06.2023 against applicant and others and according to the FIR, on 03.06.2023 applicant, who was the neighbour of the informant called the daughter of the informant aged about 11 years in his home and thereafter tried to commit rape with her and made sexual assault upon her.

4. It is further mentioned in the FIR that when informant entered in the house of the applicant then he was in nude condition. It is further mentioned in the FIR that thereafter he ran away and subsequently he made attack upon the house of the mother of the informant alongwith his brother and some others and also damaged the property of her mother.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and as per the allegation, incident occurred on 03.06.2023 but in spite of that application for lodging the FIR was moved on 05.06.2023 and FIR was lodged on 09.06.2023.

6. He further submitted that actually applicant and informant are neighbours and some dispute arose between both of them and due

to dispute, applicant was challaned on 05.06.2023 under Sections 151, 116, 107 Cr.P.C. and this fact is evident from the GD entry no. 43 dated 05.06.2023 at about 13:16 hours, which has been annexed as Annexure No. 1 to the affidavit. He further submitted that only due to this dispute, when applicant was arrested in case under Sections 151, 107, 116 Cr.P.C. then informant moved application for lodging the FIR of the present case.

7. He further submitted that even from the perusal of the statements of the victim, it appears that she was tutored and on the instigation of her mother, she made allegation against the applicant. He further submitted that even at the time of her medical examination, mother of the victim i.e. informant of the case refused to perform her internal and external examination on the ground that nothing wrong has been done against the victim and this fact is evident from Annexure No. 5 to the affidavit, which is the part of case diary.

8. He further submitted that applicant is not having any criminal history and he is in jail since 19.06.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim is hardly 11 years' old girl and she in her statement recorded under Section 164 Cr.P.C. categorically stated that applicant inserted his finger in her vagina and in her statement recorded under Section 164 Cr.P.C. she also stated that applicant was lying upon her and, therefore, allegations against him are serious.

10. Learned counsel for the informant further pointed out that there are independent witnesses also of the incident, who in their statements, recorded during investigation, stated that when informant entered in the house of the applicant then she found that applicant was lying upon her daughter i.e. victim, therefore, considering the totality of the facts and circumstances of the case, applicant should not be released on bail.

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

12. However, aged of the victim is hardly 11 years and she in her statement recorded under Section 164 Cr.P.C. stated that applicant inserted his finger in her vagina after taking her in his room and in the statement recorded under Section 161 Cr.P.C. also she stated that applicant after taking her in his room was trying to commit rape with her but FIR of the present case was lodged on

09.06.2023 on the application dated 05.06.2023 and it appears that even before the application dated 05.06.2023, applicant had been arrested by the police on 05.06.2023 at about 12:42 hours with regard to case relates under Sections 151, 107, 116 Cr.P.C.

13. Further, the story narrated by the informant in the FIR as well as by the victim in her both the statements appears to be quite improbable and only in the statement recorded under Section 164 Cr.P.C. victim very casually stated that applicant inserted his finger in her vagina and even at the time of her medical examination, informant i.e. mother of the victim stated to the doctor that nothing wrong has been done against the victim.

14. Further, applicant is not having any previous criminal history except the case under Sections 151, 107, 116 Cr.P.C. and he is in jail since 19.06.2023.

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

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

17. Let the applicant- **Yusuf** 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.

18. 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.

19. 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 :- 9.11.2023
KK Patel