

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44206 of 2023

Applicant :- Mohan Lal

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

Counsel for Applicant :- Brajesh Kumar Solanki,Pranjal Kesarwani

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As matter also pertains to provisions of Section 376-AB IPC, therefore, notices were issued to the informant of the case.
2. As per the office report, notice has been served personally to O.P. No. 2 i.e. informant of the case. Even, Sri Jhamman, learned AGA-I for the State apprised the Court that on 08.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri B.K. Solanki, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 338 of 2023, under Sections 376(A)(B)/511 IPC & 6/18 POCSO Act, Police Station- Sikandrabad, District- Bulandshahr, during pendency of the trial in the court below.
5. FIR of the present case was lodged against applicant and according to the FIR, in the absence of informant, applicant made sexual assault upon the daughter of the informant aged about 9 years.
6. Learned counsel for the applicant submitted that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C., there was any allegation of rape and in both the documents allegation against the applicant was that he disrobed the daughter of the informant but when the statement of the victim was recorded under Section 164 Cr.P.C. then she developed a new story and stated that applicant by laying upon her was trying to commit rape with her. He further submitted that on the basis of false allegation,

due to enmity applicant has been made accused in the present matter. He further submitted that actually applicant and informant both were tenant in the house of single land lord and with the connivance of the land lord, informant implicated the applicant in the present matter.

7. He further submitted that applicant is not having any criminal history and he is in jail since 11.06.2023.

8. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that there are material contradictions in both the statements of the victim recorded during investigation, however, he submitted that victim was hardly 9 years' old girl.

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

10. However, from the record, it reflects that along with the instant bail application, statement of the victim recorded under Section 164 Cr.P.C. has not been appended but the same has been provided by learned AGA during the course of argument.

11. Further, however, victim is 9 years' old girl but there are material contradictions in her both the statements recorded during investigation and in the statement recorded under Section 161 Cr.P.C., she only made allegation that applicant disrobed her but subsequently when her statement was recorded under Section 164 Cr.P.C. then she stated that applicant tried to commit rape with her and therefore, it appears that it is not a case of commission of rape but is a case of attempt to commit rape.

12. Further, applicant is not having any criminal history and he is in jail since 11.06.2023.

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- **Mohan Lal** 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 :- 9.11.2023

KK Patel