

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44379 of 2023

Applicant :- Tota Ram

Opposite Party :- State of U.P.

Counsel for Applicant :- Yogesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Mahesh Kumar Tripathi, Advocate, holding brief of Sri Yogesh Kumar Tiwari, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 188 of 2023, under Sections 376-D, 506 IPC, Police Station- Chandaus, District- Aligarh, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant and two others on 10.07.2023 and according to the FIR, on 06.07.2023 when informant was going on the motorcycle of co-accused Pawan, her distant brother-in-law (bahnoi) then on the way applicant and co-accused Kala met and thereafter applicant and co-accused Kala and distant relative Pawan committed rape with her.

4. Learned counsel for the applicant submitted that entire story narrated by the victim in the FIR as well as in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be totally false and no reliance can be placed on such version. He further submitted that although, as per the allegation, three person committed rape with the victim but in spite of that doctor did not find any injury on her body. He further submitted that although, as per the allegation, rape was committed on 06.07.2023 but FIR of the present case was lodged on 10.07.2023 i.e. after four days.

5. He further submitted that actually husband of the victim is a criminal and is detained in jail and co-accused Pawan used to do his *paravi* as he is the distant relative of the informant and some dispute with regard to *paravi* arose between them and applicant, who is neighbour and friend of co-accused Pawan, was also roped in the present matter along with co-accused Kala. He further

submitted that as applicant did not want to do *paravi* of the husband of the informant, who detained in jail and therefore, he refused for the same and result is that applicant has been made accused in the serious offence of gang rape.

6. He further submitted that applicant is not having any previous criminal history to his credit and he is in jail since 19.07.2023.

7. Per contra, learned AGA opposed the prayer for bail and submitted that it is a case of gang rape and informant in the FIR as well as in her both the statements recorded during investigation made allegation of rape against applicant, co-accused Pawan and Kala but could not dispute the fact that informant is major and married lady and story narrated by her appears to be quite improbable and during her medical examination, doctor did not find any injury on her body.

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

9. However, informant in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against applicant and two others but I find force in the argument advanced by learned counsel for the applicant that story narrated by the victim does not inspire any confidence.

10. Further, FIR of the present case was lodged after four days and doctor did not find any injury on the person of the victim and further, defence taken by the applicant cannot be completely ruled out.

11. Further, victim is major and married lady and applicant is not having any criminal history and he is in jail since 19.07.2023.

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

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

14. Let the applicant- **Tota Ram** 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.

15. 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.

16. 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 :- 18.10.2023

KK Patel