

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44260 of 2023

Applicant :- Vipin Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Virendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1.Heard Sri Virendra Singh, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 557 of 2023, under Sections 376, 452, 506, 507 IPC & 67-A I.T. Act, Police Station-Shikohabad, District- Firozabad, during pendency of the trial in the court below.

3. FIR of the present case was lodged against applicant on 21.07.2023 and according to the FIR, on 28.11.2022, applicant committed rape with the informant and also prepared her indecent videographs and threatened her to viral the same and subsequently he viraled her indecent videos and photographs.

4. Learned counsel for the applicant submitted that even from the FIR story narrated by the informant i.e. victim appears to be false and admittedly she is major lady and in fact applicant and victim both were in relationship but when in the month of June, 2023 her marriage was performed with some other person then after marriage her husband came to know the fact that she was having relationship with the applicant then she lodged the FIR of the present case totally on the basis of false allegation of rape and sexual exploitation.

5. He further submitted that although, victim in her statement recorded under Section 164 Cr.P.C. stated that applicant sent her indecent videographs and photographs to her husband but there is no such evidence on record and as per the IO, the alleged videographs of the victim was given to him by the victim herself and there is no evidence on record, which can show that either

applicant prepared the indecent videographs of the victim or sent the same to anyone.

6. He further submitted that even from the FIR and from the statements of the victim recorded during investigation, her consent is reflected.

7. He further submitted that applicant is not having any criminal history and he is in jail since 22.07.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that applicant not only committed rape with the victim but also sent her indecent videographs and photographs to her husband and, therefore, he spoiled the entire life of the victim but could not dispute the fact that as per the allegation, rape was committed by the applicant on 28.11.2022 but FIR was lodged on 21.07.2023 i.e. after more than six months and there is no evidence on record, which can show that either applicant himself prepared the obscene videographs of the victim or sent the same to anyone.

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

10. However, in the FIR and in both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., there is allegation of rape against the applicant coupled with the allegation that he also prepared her indecent videographs and sent the same to her husband and as per the prosecution, applicant committed rape with the victim on 28.11.2022 but FIR was lodged in the month of July, 2023 i.e. after more than six months and during investigation, Investigating Officer did not collect any evidence, which can show that applicant is the person, who prepared the indecent videographs of the victim and sent the same to her husband, rather, from the record, it reflects that the alleged indecent videographs of the victim were provided by victim herself to the Investigating Officer.

11. Further, the defence taken by the applicant that applicant and victim were having affair but after marriage of the victim with some other person when this fact revealed to her husband then FIR of the present case was lodged, cannot be completely brushed aside at this stage.

12. Further, applicant is not having any criminal history and he is in jail since 22.07.2023..

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- **Vipin 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 :- 31.10.2023

KK Patel