

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44549 of 2023

Applicant :- Lalu @ Vijay Chand

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

Counsel for Applicant :- Satyendra Kumar Singh,Prince Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Jhaman Ram, learned AGA for the State apprised the Court that on 19.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Prince Kumar Srivastava, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 260 of 2023, under Sections 376, 506 IPC & 3/4 POCSO Act, Police Station- Chituatal, District- Gorakhpur, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and according to the FIR, applicant used to talk with the daughter of the informant aged about 15 years and on 02.06.2023 at about 2:30 a.m. in the night he called his daughter at his house and committed rape with her.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and even from the FIR and statement of the victim, it appears that applicant used to talk with the daughter of the informant and only due to this reason, he has been made accused in the present matter and he never committed rape with her.

6. He further submitted that although, victim made allegation of rape against the applicant in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and according to her,

applicant committed rape with her on 02.06.2023 at about 2:30 a.m. but call details of the applicant and victim completely belie the allegation of rape. He further submitted that call details of the victim and applicant has been annexed as Annexure No. 9 to the affidavit, which shows that on 02.06.2023 from 03.42.09 hours to 03.50.35 hours, from 04.26.14 hours to 04.27.06 hours, 06.32.08 hours to 06.33.29 and from 06.34.32 hours to 06.36.08 hours, applicant made conversation with the victim and if applicant had committed rape with her on 02.06.2023 at about 2:30 a.m. then subsequent to that there was no occasion for the victim to make conversation with him.

7. He further submitted that applicant was also 18 years' old and he is not having any previous criminal history to his credit and he is in jail since 02.06.2023.

8. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that CDR report of the applicant shows that even after the alleged incident of rape, applicant made conversation with the victim several times.

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

10. Although, from the record, it reflects that victim was hardly 15 years' old at the time of incident 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. and stated that applicant committed rape with her on 02.06.2023 at about 2:30 a.m. but CDR report of the applicant, which has been annexed along with the instant bail application, shows that after the incident of alleged rape, several times applicant made conversation with the victim and therefore, I find force in the argument advanced by learned counsel for the applicant that CDR report of the applicant belie the allegation of rape made against the applicant on the alleged date and time.

11. Further, from the record, it reflects that applicant is also aged about 18 years' old and he is not having any criminal history and is in jail since 02.06.2023.

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- **Lalu @ Vijay Chand** 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 :- 31.10.2023

KK Patel