

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44442 of 2023

Applicant :- Pushpendra Jatav

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Rajesh Kumar, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 91 of 2023, under Sections 452, 376-D IPC, Police Station Pilua, District Etah during pendency of the trial.

3. FIR of the present case was lodged against applicant and co-accused Praveen Dheemar and according to the FIR informant was a married lady and on 12.05.2023 at about 11.00 PM in the night applicant and co-accused after entering in her house committed rape with her.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and admittedly victim is major and married lady and it is hard to believe that against her wishes anyone can commit rape with her.

5. He further submits that during medical examination doctor did not find any injury on her body. He further submits that story narrated by the victim in the FIR as well as in her 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.

6. He further submits that actually applicant and victim were having relationship and when nobody was in the home then victim called the applicant and when applicant was with the victim then in the meantime father-in-law of the victim, who was at the 'Gher of the house' arrived at spot and witnessed both of them and thereafter under the pressure of her father-in-law victim lodged

FIR of the present case.

7. He further submits that co-accused Praveen Dheemar was the friend of the applicant and he also knew the relationship of the applicant and victim, therefore, he also roped in the present matter along with applicant. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 12.06.2023.

8. Per contra, learned AGA opposed the prayer for bail and submits that victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and even in the FIR made allegation of rape against the applicant and co-accused Praveen Dheemar but could not dispute the fact that victim is major and married lady, however, he further pointed out that during investigation vaginal slide and her peticote were sent for chemical examination and as per FSL report in the vaginal slide of the victim and on her peticote sperm was found and this fact corroborates the allegation made against the applicant.

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

10. Although, victim 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 the applicant and during investigation when her vaginal slide and peticote were sent for chemical analysis then after examination it was found that on her vaginal slide and on her peticote human sperm was found but as victim is major and applicant has taken a specific plea that at the time of incident he was along with victim and arrived at home on her call, therefore, possibility of the human sperm could not be completely ruled out in such matter and defence taken by the applicant cannot be completely brushed aside at this stage.

11. Further, story narrated by the victim in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. does not inspire any confidence. Further, applicant is not having any criminal history and in the present matter he is in jail since 12.06.2023.

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 - **Pushpendra Jatav** 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

AK Pandey