

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45518 of 2023

Applicant :- Sunil Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Manoj Kumar Srivastava, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 115 of 2023, under Sections 452, 376, 506 IPC, Police Station Hasayan, District Hathras, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant through an application under section 156 (3) Cr.P.C. and according to the FIR for last six months applicant was continuously sexually exploiting the informant under the threat to viral her nude photograph and on 5.5.2023 again after entering in her house, he committed rape with her and when mother of the informant arrived, applicant ran away.
5. Learned counsel for the applicant submitted that entire story narrated by the victim in the FIR as well as in her both the statements recorded under sections 161 and 164 Cr.P.C. is totally false and admittedly, victim is married and major lady and she resides in her paternal home and applicant is the resident of the same village.
6. He further submitted that actually applicant and informant were having some relationship and when on 5.5.2023, they were in the room, in the meantime, mother of the informant arrived and thereafter FIR of the present case was lodged.
7. He further submitted that story narrated by the victim itself appears to be quite improbable and no reliance can be placed on such version.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 3.8.2023.

9. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that victim is major and married lady and even according to the FIR when applicant was committing rape with her then her mother arrived at spot.

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

11. However, in the FIR as well as in both the statements of the victim recorded under sections 161 and 164 Cr.P.C. there is allegation of sexual exploitation and rape against the applicant but admittedly victim is major and married lady and as per the victim on the basis of her nude photograph, applicant sexually exploited her but during investigation no such obscene photograph/videograph of the victim could be recovered.

12. Further, a specific averment has been made by the applicant in para-16 of the affidavit filed in support of the present bail application that applicant and victim i.e. informant of the case were having relationship. The defence taken by the applicant cannot be completely brushed aside, at this stage, specially considering the fact that even in the FIR it has been mentioned that at the time of alleged commission of rape by the applicant mother of the informant arrived at spot.

13. Further, applicant is having no criminal history and he is in jail in the present matter since 3.8.2023.

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

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

16. Let the applicant-**Sunil 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.

17. 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.

18. 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 :- 28.10.2023

Ankita