

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45135 of 2023

Applicant :- Bhupendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Prashant Kumar Singh, Avinash Mani Tripathi

Counsel for Opposite Party :- G.A., Surendra Singh

Hon'ble Sameer Jain, J.

1. Heard Sri Avinash Mani Tripathi, learned counsel for the applicant, Sri Surendra Singh, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 160 of 2023, under Sections 376, 323, 504 IPC, Police Station Awagarh, District Etah during pendency of the trial.

3. FIR of the present case was lodged against applicant on 03.07.2023 and according to the FIR on 02.07.2023 the wife of the informant was admitted in the alleged medicine shop of the applicant for the purpose of treatment and in his shop applicant committed rape with her.

4. Learned counsel for the applicant submitted that entire allegation of rape made against the applicant is totally false and story narrated by the informant in the FIR and by the victim i.e. his wife in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. appears to be unconvincing and no reliance can be placed on such version. He further submits that there are material contradictions in both the statements and it appears that on the instigation of her husband, victim made allegation of rape against the applicant.

5. He further submits that admittedly victim is major and married lady and applicant is not having any criminal history and in the present matter he is in jail since 19.07.2023.

6. Per contra, learned AGA as well as learned counsel for the informant 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. categorically stated that applicant, who claimed himself to be a doctor, misused his position and in the absence of her husband and other family members committed rape with her but both the counsels could not dispute the fact that there are material contradictions in the statement of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

7. However, learned AGA further pointed out that applicant is also having criminal history of two cases including one case of Section 307 IPC.

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

9. Although, in the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. victim made allegation of rape against the applicant but victim is major and married lady. Further, story narrated by the victim does not inspire confidence and there are material contradictions in the statements of the victim as far as manner of incident is concerned.

10. Further, however, as per learned AGA applicant is having history of two criminal cases but merely on the basis of criminal history bail application should not be dismissed, if otherwise case of bail is made out.

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

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

13. Let the applicant - **Bhupendra** 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.

14. 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.

15. 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 :- 27.10.2023

AK Pandey