

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45053 of 2023

Applicant :- Sonu Sahani

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that on 16.10.2023 notice has been served to the informant.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Ashish Pandey, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.8 of 2021(Special Sessions Case No.245 of 2021), under Section 376-DB IPC, Police Station Purandarpur, District Maharajganj during pendency of the trial.
5. Learned counsel for the applicant submits that applicant was challaned in the present matter under Sections 34, 363, 376D, 376DB, 302 and 201 IPC, Section 5/6 POCSO Act and Section 7 Criminal Law Amendment Act but unfortunately earlier his bail could not be decided by court concerned for offence under Section 376-DB IPC and, therefore, when he applied for bail before this Court then he could not apply for bail for offence under Section 376 DB IPC and this Court on 25.9.2023 granted bail to applicant in the present matter under Sections 34, 363, 376-D, 302 and 201 IPC, Section 5/6 POCSO Act and Section 7 Criminal Law

Amendment Act but when this fact subsequently revealed to the applicant that his bail could not be granted for offence under Section 376DB IPC then he filed bail application for offence under Section 376-DB IPC before the court concerned which was dismissed on 7.10.2023 and therefore, he filed the instant bail application for offence under Section 376 DB IPC.

6. He further submits that after considering entire facts of the case with a very detailed order, bail was granted to applicant in the instant matter by Coordinate Bench of this Court on 25.9.2023 passed in Criminal Misc. Bail Application No.36442 of 2021 and the order passed by this Court dated 25.9.2023 has been annexed as Annexure-1 to the affidavit filed in support of the instant bail application, therefore, the instant bail application which was filed by applicant for offence under Section 376DB IPC should be allowed.

7. He further submits that applicant is in jail in the present matter since 22.1.2021.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that vide order dated 25.9.2023 Coordinate Bench of this Court with a very detailed and reasoned order granted bail to applicant in the present matter under Sections 34, 363, 376-D, 302 and 201 IPC, Section 5/6 POCSO Act and Section 7 Criminal Law Amendment Act.

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

10. Considering the fact that from a very detailed and reasoned order dated 25.9.2023 applicant was granted bail in the instant case by Coordinate Bench of this Court for offences under Section 34, 363, 376D, 302 and 201 IPC, Section 5/6 POCSO Act and Section

7 Criminal Law Amendment Act and due to mistake he could not move bail application earlier for offence under Section 376DB IPC, in my view, applicant is also entitled to be released on bail for offence under Section 376 DB IPC.

11. Accordingly, the instant bail application is **allowed**.

12. Let the applicant-**Sonu Sahani** 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.

13. 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.

14. 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

SKM