

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45599 of 2023

Applicant :- Vivek

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

Counsel for Applicant :- Amit Kumar, Vishvanath Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Kunwar Tejendra Bahadur, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 16.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Amit Kumar, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, 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.207 of 2023, under Sections 498A, 323,506, 376,363, 342 and 120-B IPC, Section 3/4 Dowry Prohibition Act and Section 5(Tha)/6 POCSO Act, Police Station Thakurdwara, District Moradabad during pendency of the trial.
5. FIR of the present case was lodged against the applicant and two others on 2.6.2023 and according to the FIR, marriage of the daughter of the informant was performed with the applicant and after marriage applicant along with other co-accused persons tortured her for demand of dowry. It is further mentioned in the FIR that on 18.4.2023 applicant and his brother-in-law,i.e., co-accused Kishan have forcibly taken the younger daughter of the informant aged about 16 years and forcibly kept her in their house for three weeks and applicant committed rape with her and thereafter on 8.5.2023 applicant and other co-accused persons left the younger daughter of the

informant at his house.

6. Learned counsel for the applicant submits that applicant is the son-in-law of the informant and as matrimonial dispute is pending between applicant and his wife, therefore, only due to this reason applicant along with the provisions of Section 498A IPC also roped for offence under Section 376 IPC.

7. He further submits that allegation of rape against the applicant appears to be quite abnormal and as per allegation applicant committed rape with his sister-in-law aged about 16 years but the story narrated by the victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. not only appears to be improbable but also appears to be vague.

8. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 25.8.2023.

9. Per contra, learned AGA opposed the prayer for bail and submits that applicant is the brother-in-law (jija) of the victim and victim was hardly 16 years old and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant.

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

11. However, from the record it reflects that applicant is the brother-in-law (jija) of the victim and she also appears to be aged about 16 years and she made allegation of rape against the applicant but story narrated by her in her both the statements recorded under Sections 161 and 164 Cr.P.C. does not inspire confidence and it further reflects from the record that a matrimonial dispute is pending between applicant and his wife,

i.e., sister of the victim.

12. Further, from the record it reflects that vague allegations have been levelled against the applicant by the victim.

13. Further, applicant is not having any previous criminal history and in the present matter he is in jail since August, 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-**Vivek** 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 :- 17.11.2023

SKM