

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44800 of 2023

Applicant :- Sanjay

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

Counsel for Applicant :- Sanjay Kumar Sharma, Satendra Singh

Counsel for Opposite Party :- G.A., Dharendra Kumar Verma, Renu Swarnkar

Hon'ble Sameer Jain, J.

1. None appeared on behalf of the informant even in the revised call. However, learned AGA, for the State, is present.
2. Heard Sri Sanjay Kumar Sharma, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.0166 of 2023, under Sections 363, 366 and 376D IPC and Section 3/4 POCSO Act, Police Station Dhanari, District Sambhal during pendency of the trial.
4. FIR of the present case was lodged against the applicant and four others (non applicant) and according to the FIR, the nominated accused persons enticed away the daughter of the informant aged about 16 years.
5. Learned counsel for the applicant submits that applicant was neither named in the FIR nor victim disclosed his name in her statement recorded under Section 161 Cr.P.C.
6. He further submits that victim did not even made allegation of rape in her statement recorded under Section 161 Cr.P.C. against other accused persons but when her statement under Section 164 Cr.P.C. was recorded then she started making allegation of rape

and also disclosed the name of applicant and stated that applicant along with two others committed rape with her and, therefore, there are material contradictions in both the statements of the victim recorded during investigation and this fact suggests that applicant has falsely been implicated in the present matter.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 30.7.2023,

8. Per contra, learned AGA opposed the prayer for bail and submits that applicant apart from the present case is also having criminal history of one case of Sections 452 and 323 but he could not dispute the fact that applicant has been made accused in that case after his arrest in the present matter.

9. Learned AGA further could not dispute the fact that there are material contradictions in both the statements of the victim recorded during investigation.

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

11. Considering the fact that there are material contradictions in both the statements of the victim recorded during investigation and in the statement recorded under Section 161 Cr.P.C. victim did not even disclose the name of applicant, 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-**Sanjay** 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 :- 7.11.2023
SKM