

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53146 of 2019

Applicant :- Kanta Prasad

Opposite Party :- State of U.P.

Counsel for Applicant :- Atharva Dixit, Jai Prakash Yadav, Pradeep Kumar Yadav, Raghuvansh Misra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Smt. Sanju Lata, Advocate, filed her power on behalf of the informant today in the Court, which is taken on record.
2. Heard Sri Babu Ram Yadav, Advocate, holding brief of Sri Pradeep Kumar Yadav, learned counsel for the applicant, Smt. Sanju Lata, learned counsel for the informant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 60 of 2019, under Sections 366-B, 351, 370-A, 376(2)N IPC & 4/6/17 POCSO Act & 3, 4, 5, 6 P.I.T.A. Act, Police Station- Subhash Nagar, District- Bareilly, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 03.02.2019 against applicant and others and according to the FIR, informant is a social worker and his institute worked against human trafficking. It is further mentioned in the FIR that after receiving informant with the help of local police, after long search, victim of the case was recovered from District Bareilly, Uttar Pradesh and at the time of recovery, she was in very bad condition and number of injuries were on her body and she informed that applicant and other accused persons threw her in prostitution and on her information, informant and local police raided a house and applicant was apprehended alongwith his wife from the room.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and after recovery of the alleged victim, who was Bangladesh nationals, local police implicated the applicant in the present matter.

6. He further submitted that initially in the FIR, there was no allegation of rape against the applicant but on the instigation of police, during investigation, in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. victim started making allegation of rape against applicant and co-accused Ajay.

7. He further submitted that applicant is not having any criminal history and he is in jail since 04.02.2019 i.e. for more than four and half years.

8. He further submitted that however, applicant is in jail for more than four and half years but till date, trial of the case could not be concluded and till date, only three prosecution witnesses could be examined and till date, victim of the case could not be examined, therefore, considering the nature of allegation and evidence collected against the applicant and his long incarceration of more than four and half years, he may be released on bail.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that allegations against the applicant are quite serious and he along with other accused persons threw the victim in prostitution and victim is national of Bangladesh and she in her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant and co-accused Ajay and, therefore, it is not a case in which merely on the basis of long incarceration of four and half years, applicant should be released on bail.

10. Learned counsel for the informant further submitted that due to her mental trauma, victim of the case is so unstable that till date, her statement could not be recorded by the trial court. She further submitted that after recovery from her trauma, victim will be produced before the trial court.

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

12. However, in the present matter, it appears that applicant is in jail for more than four and half years and out of total 14 prosecution witnesses of the charge sheet only three prosecution witnesses could be examined till date but it is a case in which, a national of Bangladesh has been thrown in prostitution and she was found in very precarious condition from District Bareilly and she disclosed the name of the applicant.

13. Further, from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., it appears that she made allegation of gang rape against the applicant and co-accused Ajay and, therefore, I find force in the argument advanced by learned counsel for the informant and learned AGA that in such cases, merely on the ground of long incarceration, it is not proper to release the accused person on bail, therefore, in my considered view, in spite of the fact that applicant is in jail for more than four and half years, he should not be released on bail at this stage.

14. Accordingly, the instant bail application is ***rejected*** at this stage.

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.

16. However, considering the fact that applicant is in jail for more than four and half years, trial court is directed to conclude the trial of the case within a period of ***eight months*** from the date of production of certified copy of this order, strictly as per the provisions of Sections 35 POCSO Act and 309 Cr.P.C. without granting any unnecessary adjournment to either of the parties, if there is no legal impediment.

17. It is open for the applicant to renew his prayer for bail after the stipulated period of eight months or after recording of the statement of the victim by the trial court, whichever is earlier, subject to the condition that applicant shall fully co-operate with the trial.

Order Date :- 20.11.2023

KK Patel