

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44981 of 2023

Applicant :- Sheelesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Narayan Singh(Kushwaha)

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Narayan Singh Kushwaha, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 91 of 2023, under Sections 376D, 504, 506 IPC, Police Station Nayagaon, District Etah during pendency of the trial.

3. FIR of the present case was lodged against applicant and four others and according to the FIR applicant and four others on 15.06.2023 committed rape with the informant, who is major and married lady aged about 28 years, while she was working in the field of one Brijesh Kumar.

4. Learned counsel for the applicant submitted that entire allegation of rape made against the applicant is totally false and baseless and actually victim i.e. informant of the case is servant of Brijesh Kumar and Bhabhi of the applicant lodged FIR against two brothers-in-law of Brijesh Kumar namely Indresh and Alok on 05.05.2023 under Sections 376D, 504 and 506 IPC and only due to this reason on the instigation of Brijesh Kumar applicant has been roped in the present matter along with others.

5. He further submits that FIR lodged by Bhabhi of the applicant has been annexed as Annexure-5 to the affidavit. He further submits that although it is a case of gang rape but in spite of that doctor did not note any injury on the body of the victim. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 04.09.2023.

6. Per contra, learned AGA opposed the prayer for bail and submits that it is a case of gang rape and there is allegation of rape against

applicant but could not dispute the fact that doctor did not find any injury on the body of the victim and victim is major and married lady aged about 28 years and Bhabhi of the applicant had lodged FIR in the month of May, 2023 against brothers-in-law of Brijesh Kumar, who is master of the informant. He further could not dispute the fact that applicant is not having any criminal history.

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

8. Although, it appears to be a case of gang rape and as per allegation applicant along with other accused persons committed rape with the victim but from perusal of the FIR, it reflects that it is lodged through an application under Section 156(3) Cr.P.C. and victim i.e. informant of the case is major and married lady aged about 28 years and she is the servant of one Brijesh Kumar and Bhabhi of the applicant lodged FIR of gang rape against two brothers-in-law of Brijesh Kumar. The FIR lodged by Bhabhi of the applicant has been annexed along with instant bail application, therefore, argument advanced by learned counsel for the applicant cannot be completely brushed aside at this stage.

9. Further, story narrated by the victim does not appear to be convincing and applicant is not having no criminal history and in the present matter he is in jail since 04.09.2023.

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

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

12. Let the applicant - **Sheelesh** 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 :- 26.10.2023

AK Pandey