

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45069 of 2023

Applicant :- Vivek Singh @ Babu Singh

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Chandra Prakash Misra, Sushil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Sushil Kumar Mishra, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.208 of 2023, under Sections 323, 504, 506, 452, 308, 354 and 376 IPC, Police Station Kuberasthan, District Kushinagar during pendency of the trial.
3. FIR of the present case was lodged on 31.7.2023 against the applicant and according to the FIR, applicant after entering into the house of the informant on 29.7.2023 tried to commit rape upon the wife of the informant and when she resisted then he made assault upon her and due to assault made by applicant wife of the informant sustained serious injuries.
4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and applicant is the real collateral of the informant and long enmity is pending between both the sides and in the year 2021 a compromise was also executed between both sides which has been annexed as Annexure-7 to the affidavit filed in support of the present bail application.
5. He further submits that on the date of incident again some

dispute arose between both sides and during scuffling wife of the informant sustained injuries.

6. He further submits that although FIR from the side of informant was lodged on 31.7.2023 but FIR from the side of applicant could only be lodged on 2.8.2023.

7. He further submits that FIR lodged by the mother of applicant dated 2.8.2023 has been annexed as Annexure-8 to the affidavit filed in support of the present bail application.

8. He further submits that there is no allegation of rape against the applicant in the FIR but during investigation victim started making allegation of rape against the applicant.

9. He further submits that victim is major and married lady and the story narrated by her does not inspire any confidence.

10. He further submits that it appears from both the statements of the victim that very casually she made allegation of rape against the applicant.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 24.8.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and applicant also made assault upon her and she also sustained injury but he could not dispute the fact that victim is major and married lady and applicant is collateral of the informant and some dispute is pending between both the sides

and with regard to incident dated 29.7.2023 an FIR was also lodged by the mother of applicant against the informant on 2.8.2023.

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

14. However, victim, i.e., wife of the informant in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but she is major and married lady and story narrated by her does not inspire any confidence and it appears that she very casually made allegation of rape in her both the statements against the applicant.

15. Further, there is no allegation of rape against the applicant in the FIR of the present case which was lodged by the husband of the victim on her information.

16. Further, from the record it also reflects that applicant is collateral of the informant and some dispute is pending between both the sides and with regard to the incident dated 29.7.2023 an FIR was also lodged by the mother of applicant on 2.8.2023.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 24.8.2023.

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

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

20. Let the applicant-**Vivek Singh @ Babu Singh** 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.

21. 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.

22. 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 :- 8.11.2023
SKM