

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45111 of 2023

Applicant :- Ehsan Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Avijit Saxena

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Satya Prakash Rathore and Sri Ashutosh Tripathi, Advocates filed their power today on behalf of the informant, which is taken on record.

2. Heard Sri Avijit Saxena, learned counsel for the applicant, Sri Ashutosh Tripathi, learned counsel for the informant and Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 337 of 2023, under Sections 376(2) N, 452, 504, 506, 323 IPC, Police Station- Kotwali Mahoba, District- Mahoba, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and according to the FIR, in the absence of the husband of the informant, applicant came at her house and tried to outrage her modesty and when her mother-in-law arrived then he ran away after threatening her.

5. Learned counsel for the applicant submitted that admittedly victim i.e. informant of the case is major and married lady and allegation made against the applicant appears to be false. He further submitted that neither in the FIR nor in the statement recorded under Section 161 Cr.P.C., victim made any allegation of rape against the applicant and only stated that applicant tried to outrage her modesty but when her statement was recorded under Section 164 Cr.P.C. then she started making allegation of rape against him and this fact clearly suggests that victim is not a reliable witness.

6. He further submitted that applicant is not having any criminal

history and he is in jail since 10.08.2023.

7. Per contra, learned AGA as well as learned counsel for the informant although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

9. Although, from the record, it reflects that victim made allegation of rape against the applicant in her statement recorded under Section 164 Cr.P.C. but no such allegation was levelled by her against the applicant either in the FIR or in her statement recorded under Section 161 Cr.P.C.

10. Further, victim is the informant of the case and she is major and married lady and applicant is not having any criminal history and he is in jail since 10.08.2023.

11. Therefore, considering the facts and circumstances of the case discussed above, 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- **Ehsan Khan** 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 :- 27.10.2023

KK Patel