

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45160 of 2023

Applicant :- Monu

Opposite Party :- State of U.P.

Counsel for Applicant :- Shashank Kumar, Shiv Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Shashank Kumar, learned counsel for the applicant and Sri Manoj Kumar Singh, learned Brief Holder for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 224 of 2023, under Sections 323, 504, 506, 376 IPC, Police Station Dhampur, District Bijnor during pendency of the trial.

3. FIR of the present case was lodged against applicant and according to the FIR in the night of 15.06.2023 when grand mother of the informant was sleeping then applicant forcibly entered in the house and tried to drink some cold drink to her and when she resisted then he started abusing her and started throwing bricks and due to the throwing of bricks, his grand mother sustained injuries and when daughter-in-law of the victim arrived at spot then applicant ran away.

4. Learned counsel for the applicant submitted that initially FIR of the present case was lodged under Sections 323, 504, 506 IPC but when the statement of victim i.e. grand mother of the informant was recorded under Section 161 Cr.P.C. then she started making allegation of rape against the applicant.

5. He further submits that applicant is distant relative of the victim and victim is 60 years old lady and story narrated by her appears to be unconvincing.

6. He further submits that actually some property dispute with regard to partition is pending between both the parties and only due to this reason, applicant has been made accused in the present matter.

7. He further submits that distant relationship of the applicant has been admitted by the victim herself in the statement recorded during investigation. He further submits that very casually applicant has been made accused in the case of rape and from the perusal of the allegation made by the victim, it appears that she is not truthful witness and no reliance can be placed on such version. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 20.06.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact, in the FIR there is no allegation of rape and victim is 60 years old and applicant is distant relative of the victim.

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

10. Although, in the statement recorded under Section 161 Cr.P.C. victim stated that applicant, who is distant relative, committed rape with her in the night of 16/17.06.2023 but in the statement recorded under Section 164 Cr.P.C. she changed the date of incident and stated that applicant committed rape on 14.06.2023.

11. Further, story narrated by the victim does not inspire any confidence. Further, although as per allegation due to stone throwing by the applicant, victim sustained injury but her medical report suggests that she does not sustain any injury. Further, applicant is not having any criminal history and in the present matter he is in jail since 20.06.2023.

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

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

14. Let the applicant - **Monu** 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.

15. 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.

16. 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

AK Pandey