

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45474 of 2023

Applicant :- Rinku

Opposite Party :- State of U.P.

Counsel for Applicant :- Ajay Kumar Vashistha

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Ajay Kumar Vashistha, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 170 of 2023, under Sections 452, 376-D, 506 IPC, Police Station- Kasganj, District- Kasganj, during pendency of the trial.
4. FIR of the present case was lodged against applicant and co-accused Anand Pal and according to the FIR, on 05.03.2023 informant, who was a married lady, was alone in the house, applicant dragged her in the dry drain and committed rape with her. It is further mentioned in the FIR that co-accused Anand was guarding them by standing outside of the dry drain.
4. Learned counsel for the applicant submits that totally on the basis of false allegation applicant has been made accused in the present matter.
5. He further submits that admittedly informant,i.e, victim of the case is a major and married lady and the alleged story narrated by her in the FIR and in her both the statements recorded under Sections 161 and 164 Cr.P.C. appears to be highly improbable.
6. He further submits that actually applicant and victim developed

friendship and husband of the victim witnessed them in their intimate hours and thereafter under the pressure of her husband victim lodged FIR of the present case.

7. He further submits that informant, i.e., victim of the case in her statement recorded under Section 164 Cr.P.C. developed new story and stated that applicant and co-accused Anand both committed rape with her and this fact clearly suggests that she is not reliable witness and she is changing her statements at different stages.

8. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 30.3.2023, i.e., for the last more than six months.

9. Per contra, learned AGA, for the State, although opposed the prayer for bail but could not dispute the fact that victim is major and married lady and she changed story in her statement recorded under Section 164 Cr.P.C.

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

11. However, in the FIR as well as in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. there is allegation of rape against the applicant but the informant, i.e., victim of the case is a major and married lady and in paragraph-8 to the affidavit filed in support of the present bail application applicant has taken a specific defence that he and victim both were in consensual relationship and when this fact was revealed to the husband of the victim then FIR of the present case was lodged. The defence taken by applicant cannot be completely ruled out at this stage.

12. Further, however in the FIR and in the statement recorded

under Section 161 Cr.P.C. the allegation of rape was only against the applicant but when the statement of the victim was recorded under Section 164 Cr.P.C. then she stated that co-accused Anand also committed rape with her along with applicant, therefore, there are contradictions in both the statements of the victim.

13. Further, applicant is not having any previous criminal history and he is in jail since March, 2023, i.e., for the last more than six months.

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

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

16. Let the applicant-Rinku 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.

17. 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.

18. 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 :- 22.11.2023

SKM