

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45325 of 2023

Applicant :- Ram Sunder Alias Nirahu

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Dhirendra Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. As per office report service of notice upon the informant is still awaited but Sri Imran Khan, learned AGA for the State apprised the Court that notice has been served upon the informant on 12.10.2023.

2. Despite service of notice, none present on behalf of the informant, therefore, in view of the observation made by this Court in the case of Ajeet Chaudhary Vs. State of U.P. and another passed in Criminal Misc. Bail Application No. 45784 of 2020, the instant bail application is being heard.

3. Heard Sri Dhirendra Kumar Srivastava, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State.

4. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 218 of 2023, under Sections 323, 506, 376DA IPC and Section 5/6 POCSO Act, Police Station Koraon, District Prayagraj during pendency of the trial.

5. FIR of the present case was lodged on 04.06.2023 against three persons (non applicant) and one unknown person and according to the FIR on 02.06.2023 at about 8.00 PM in the night when daughter of the informant aged about 16 years was going to ease herself then nominated accused persons along with their associates intercepted her and made sexual assault upon her and also started preparing her video. It is further submitted in the FIR that nominated accused persons also caused injury on the hand of the victim.

6. Learned counsel for the applicant submitted that applicant was not named in the FIR but when the statement of the victim was recorded under Section 161 Cr.P.C. then she disclosed the name of applicant. He further submits that there is no allegation of rape in the FIR but victim in her statement recorded under Section 161 Cr.P.C. stated that applicant and three others committed rape upon her.

7. He next submits that similar statement was given by the victim in her statement recorded under Section 164 Cr.P.C. however, in the statement recorded under Section 164 Cr.P.C. she admitted that her family is having enmity with applicant and other accused persons due to land dispute and this fact clearly suggests that due to previous enmity applicant and other persons were falsely implicated in the present matter. He further submits that even story narrated by the victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. does not inspire any confidence and no reliance can be placed on such version.

8. He further submits that however victim in her statement recorded under Section 164 Cr.P.C. stated that from her private part blood was also oozing but her medical report completely belies this fact. He further submits that co-accused Ashish @ Golu has already been released on bail by the co-ordinate Bench of this Court vide order dated 03.11.2023 passed in Criminal Misc. Bail Application No. 45337 of 2023 and case of applicant is even at better footing than him as co-accused Ashish @ Golu was named in the FIR.

9. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 06.06.2023 i.e. for almost six months.

10. Per contra, learned AGA opposed the prayer for bail and submitted that as per school record, victim was hardly 15 years old and she made allegation of gang rape against the applicant and others but could not dispute the fact that even victim in her statement recorded under Section 164 Cr.P.C. admitted the existing enmity between both sides. He further could not dispute the fact that co-accused Ashish @ Golu has already been enlarged on bail and case of applicant is even at better footing than him.

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

12. However, as per school record victim was about 15 years old at the time of incident and she made allegation of gang rape against the applicant and others in her statement recorded under Section 164 Cr.P.C. but victim in her statement recorded under Section 164 Cr.P.C. also admitted the enmity pending between the applicant and other accused persons and her family members with regard to the land.

13. Further, victim in her statement recorded under Section 164 Cr.P.C. also stated that blood was oozing from her private part but her medical report does not support this fact. Further, from the perusal of the statement of the victim recorded under Section 164 Cr.P.C. it appears that actually rape was committed by co-accused Sonu and Pravesh and as per allegation other accused persons including applicant caught hold her and has taken the victim.

14. Further, co-accused Ashish @ Golu has already been released on bail by the co-ordinate Bench of this Court and he was named in the FIR and victim in her both the statements also made same allegation as levelled against the applicant.

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

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

17. Let the applicant - **Ram Sunder Alias Nirahu** 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.

18. 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.

19. 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 :- 23.11.2023

AK Pandey