

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45548 of 2023

Applicant :- Suraj

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

Counsel for Applicant :- Hemant Kumar Srivastava, Priyanshu Kumar Srivastava

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. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 25.10.2023.
3. Despite service of notice, none appeared on behalf of the informant.
4. Heard Sri Hemant Kumar Srivastava, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.30 of 2023, under Sections 376, 511, 506 and 354 Gha IPC and Sections 9,10 and 18 POCSO Act, Police Station Keoladiya, District Bareilly during pendency of the trial.
6. FIR of the present case was lodged against the applicant and one another on 4.2.2023 and according to the FIR, on 19.1.2023 applicant and co-accused tried to commit rape with the maternal grand daughter of the informant aged about 13 years.
7. Learned counsel for the applicant submits that due to previous

enmity applicant has been made accused in the present matter along with co-accused Shanker. He further submits, co-accused Shanker, cousin brother of applicant has lodged FIR against the informant and others which has been annexed as Annexure-9 to the affidavit filed in support of the present bail application and the trial of the case is still pending and only due to this enmity applicant in the present matter has been made accused.

8. He further submits that FIR of the present case was lodged after two weeks and the allegation against the applicant is that he along with co-accused tried to commit rape upon the maternal grand daughter of the informant and, therefore, even as per prosecution no rape was committed.

9. He further submits that applicant is in jail in the present matter since 17.7.2023.

10. Per contra, learned AGA opposed the prayer for bail and submits that victim was hardly 13 years of age but he could not dispute the fact that earlier in the year 2019 co-accused Shanker lodged FIR against the informant and others and there is allegation of attempt to commit rape, however, he next submits that applicant is also having criminal history of two other cases of offences under Sections 384 and 307 IPC.

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

12. However, as per instructions of learned AGA applicant is also having criminal history of two other cases but it appears that in the present matter FIR was lodged after more than two weeks and there is only allegation of attempt to commit rape and earlier in the

year 2019 co-accused Shanker, the cousin brother of applicant, has lodged FIR against the informant and others.

13. If otherwise the case of bail is made out then merely on the ground of previous antecedents of accused bail application should not be dismissed.

14. Further, in the present matter applicant is in jail since 17.7.2023.

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-**Suraj** 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 :- 8.11.2023

SKM