

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45584 of 2023

Applicant :- Dwarika Kushwaha

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

Counsel for Applicant :- Raghuvansh Misra

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 27.10.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Raghuvansh Misra, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.104 of 2023, under Sections 363, 366, 376,376(d), 328, 354, 354(a) and 506 IPC, Section 7/8 POCSO Act and Section 3(2)5, 3(2)5a, 3(1)w, 3(1)da SC/ST Act, Police Station Uldan, District Jhansi during pendency of the trial.
5. FIR of the present case was lodged on 6.7.2023 against the applicant and according to the FIR, on 8.10.2022 applicant has taken the informant, who is major and married lady, under the pretext to provide her job and continuously sexually exploited her and when her husband came to know about this fact, he anyhow rescued her from the possession of applicant.
6. Learned counsel for the applicant submits that applicant is

innocent and entire allegation made against the applicant is totally false and baseless.

7. He further submits that although in the FIR and in the statements of the victim recorded during investigation it is mentioned that on 8.10.2022 applicant has taken her and kept her in a room and committed rape with her but neither in the FIR nor in both the statement of the victim recorded during investigation any date was mentioned when her husband rescued her and this fact clearly suggests that on the basis of false allegation applicant has been made accused in the present matter.

8. He further submits that FIR of the present case was lodged on 6.7.2023, i.e., after about nine months and this inordinate delay in lodging the FIR itself shows that entire story narrated by the victim is totally false.

9. He further submits that admittedly victim is married and major lady and the story narrated by her does not inspire any confidence and no reliance can be placed on such version.

10. He further submits that in the FIR and in the statement recorded under Section 161 Cr.P.C. victim made allegation of sexual exploitation only against the applicant but in the statement recorded under Section 164 Cr.P.C. she stated that along with applicant 3-4 unknown persons also committed rape upon her and, therefore, at subsequent stage victim in her statement recorded under Section 164 Cr.P.C. developed a new story, therefore, no reliance can be placed on such witnesses.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since

26.7.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that in the FIR and in both the statements of the victim recorded during investigation there is allegation of rape and sexual exploitation against the applicant but he could not dispute the fact that FIR of the present case was lodged after about nine months and there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C.

13. Learned AGA further could not dispute the fact that victim is major and married lady.

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

15. However, in the FIR and in both the statements of the victim recorded during investigation there is allegation of rape and sexual exploitation against the applicant but the informant, i.e., victim of the case is major and married lady and story narrated by her appears to be quite unconvincing.

16. Further, FIR of the present case was lodged after about nine months from the alleged date on which applicant is said to have taken the victim and thereafter sexually exploited her.

17. Further, however victim in the FIR and in the statement under Section 161 Cr.P.C. made allegation of rape and sexual exploitation only against the applicant but in her statement under Section 164 Cr.P.C. she also introduced 3-4 persons along with applicant, therefore, there are material contradictions in both the statements of the victim recorded during investigation.

18. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 26.7.2023.

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

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

21. Let the applicant-**Dwarika Kushwaha** 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.

22. 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.

23. 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