

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46448 of 2023

Applicant :- Mohammad Ishaque

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

Counsel for Applicant :- Kshitij Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Ms. Manisha Chaturvedi, Advocate, filed her power today on behalf of High Court Legal Services, which is taken on record.

2. Sri Imran Khan, learned AGA for the State apprised the Court that on 26.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant. However, learned AGA for the State and learned counsel appearing on behalf of High Court Legal Services are present.

3. Heard Sri Kshitij Pal Singh, learned counsel for the applicant, Sri Imran Khan, learned AGA for the State and Ms. Manisha Chaturvedi, learned counsel appearing on behalf of High Court Legal Services.

4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 77 of 2023, under Sections 376-DA IPC & 5(g)/6 POCSO Act, Police Station- Manikpur, District- Chitrakoot, during pendency of the trial in the court below.

5. FIR of the present case was lodged against applicant and according to the FIR, applicant is the teacher of the daughter of the informant aged about 15 years and for last 4-5 months, he was continuously sexually exploiting her.

6. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and applicant never misused his position being teacher of the victim. He further submitted that although, victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. stated that applicant sexually exploited her but her statement

recorded under Section 164 Cr.P.C. is a very detailed statement and from its perusal, it appears that first time on 01.02.2023, applicant committed rape with her and thereafter from 01.02.2023 to 05.02.2023 he number of times sexually exploited her but from 01.02.2023 to 06.02.2023 applicant was on leave and this fact is evident from parcha no. 12 of the case diary, which has been annexed alongwith the instant bail application.

7. He further submitted that on 01.02.2023 applicant appeared in CTET Examination at District- Sagar, Madhya Pradesh and he also cleared this examination and on 04.02.2023 he was at Hubballi, Karnataka to appear in his Physical Efficiency Test and he also cleared this examination and all these facts are evident from Annexure No. 11 to the affidavit. He further submitted that the evidence collected by the Investigating Officer that applicant from 01.02.2023 to 06.02.2023 was on leave from the school and from Annexure No. 11 of the affidavit, it reflects that on 01.02.2023 to 06.02.2023, applicant was not in his school and all these facts completely belies the prosecution case.

8. He further submitted that applicant is not having any criminal history and he is in jail since 30.07.2023.

9. Per contra, learned AGA as well as learned counsel appearing on behalf of High Court Legal Services opposed the prayer for bail and submitted that victim was hardly 15 years' old girl and in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., she stated against the applicant but could not dispute the fact that from the perusal of the record, it reflects that from 01.02.2023 to 06.02.2023 applicant was on leave and on 01.02.2023 and 04.02.2023, he was in Sagar, Madhya Pradesh and Hubballi, Karnataka respectively for the purposes of his examination.

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

11. Although, it appears that applicant was teacher of the victim and very serious allegation of rape has been levelled against him even by the victim herself and in her statement recorded under Section 164 Cr.P.C., she stated that applicant committed rape with her in the school for the first time on 01.02.2023 and thereafter number of times from 01.02.2023 to 05.02.2023, he committed rape with her in the school but from the parcha no. 12 of the case diary, it reflects that applicant from 01.02.2023 to 06.02.2023 was on leave and further from Annexure No. 11 of the affidavit, it appears that on 01.02.2023 applicant was in Sagar, Madhya

Pradesh and on 04.02.2023 he was in Hubballi, Karnataka for the purposes of his examination and not only he appeared in these examinations but also cleared these examinations, therefore, all these documents prima facie completely belies the allegation of rape levelled against the applicant.

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- **Mohammad Ishaqae** 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 :- 2.11.2023

KK Patel