

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47625 of 2023

Applicant :- Atar Singh @ B.P. Singh

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

Counsel for Applicant :- Anjeet Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Shatrughna Yadav, learned AGA for the State apprised the Court that on 21.10.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Anjeet Singh, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 76 of 2023, under Sections 376 IPC & 4 POCSO Act, Police Station- Radhanagar, District-Fatehpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against the applicant on 26.03.2023 and according to the FIR, on 24.03.2023 when daughter of the informant had gone to ease herself at about 10:30 in the night then applicant forcibly abducted her and committed rape with her.
5. Learned counsel for the applicant submitted that entire story narrated by the informant in the FIR *prima facie* appears to be false. He further submitted that actually applicant is the relative of the informant and a dispute of property is pending between both the sides and only due to this reason, applicant has been made accused in the present matter.
6. He further submitted that even one Amarjeet Yadav, uncle of the applicant and victim in his statement recorded under Section 161 Cr.P.C. admitted the fact that there was family dispute between both the sides and his statement has been annexed as Annexure No. 11 to the affidavit.

7. He further submitted that as per the prosecution, when victim had gone to ease herself then applicant committed rape with her but site plan of the case shows that in the house of the informant there was toilet therefore, there was no occasion for the victim to go outside to ease herself in the late evening and this fact again shows that due to enmity, applicant has been falsely implicated in the present matter. He further submitted that even story narrated by the victim does not inspire any confidence.

8. He further submitted that as per the CMO report, victim was 18 years' old and even according to the school record at the time of incident she was around 17 years' old.

9. He further submitted that applicant is not having any criminal history and he is in jail since 06.04.2023.

10. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. However, from the school record, victim was 17 years' old at the time of incident but according to the CMO report, she was around 18 years' old. Further, she made allegation of rape against the applicant in her both the statements recorded during investigation but in both the statements she stated that when she was going to ease herself in the late evening from her house then applicant committed rape with her but site plan of the case shows that in the house of the informant, there was toilet and therefore, I find force in the argument advanced by learned counsel for the applicant that if in the house of the victim, there was toilet then there was no occasion for her to go outside from her house in the late evening to ease herself.

13. Further, according to the defence applicant is the relative of the victim and family dispute is pending between both the sides and this fact also finds support from the statement of the uncle of the victim and applicant, which has been annexed as Annexure No. 11 to the affidavit. Further, story narrated by the victim does not inspire any confidence.

14. Further, applicant is not having any criminal history and he is in jail since 06.04.2023 i.e. for more than six months.

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- **Atar Singh @ B.P. Singh** 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 :- 7.11.2023

KK Patel