

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 45888 of 2023

**Applicant :-** Dheeraj Sharma

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Manish Kumar

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain,J.**

1. Heard Sri Manoj Kumar, Advocate holding brief of Sri Manish Kumar, learned counsel for the applicant and Sri Ravi Kant Kushwaha, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 184 of 2023, under Sections 376, 376D, 376(2)N, 506 IPC, Police Station Kasna, District Gautam Buddh Nagar during pendency of the trial.

3. FIR of the present case was lodged against applicant and co-accused Gaurav Kaushik and according to the FIR on 17.07.2023 co-accused Gaurav Kaushik committed rape with the informant and also prepared her indecent video and also stated that he is also having indecent video of the informant and her husband. It is further mentioned in the FIR that on the basis of said video applicant also committed rape with the victim.

4. Learned counsel for the applicant submitted that on the basis of vague allegation very casually applicant has been made accused in the FIR of the present case. He further submits that applicant is cousin brother of co-accused Gaurav Kaushik and only due to this reason he has been made accused in the present matter.

5. He further submits that even from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. it appears that very casually she made allegation of rape against the applicant. He further submits that victim is admittedly major and married lady and story narrated by her appears to be improbable. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 22.07.2023.

6. Per contra, learned AGA opposed the prayer for bail and submits that in the FIR as well as in both the statements of the

victim recorded during investigation there are allegation of rape against the applicant and co-accused Gaurav Kaushik. He further submits that during investigation the father of the victim and her uncle provided a video to the Investigating Officer and from perusal of the video, it reflects that applicant was committing rape with the victim and this fact is evident from parcha no.7 of the case diary dated 30.07.2023.

7. He further submits that alleged video completely belies the defence version, therefore, considering the facts and circumstances of the case, applicant should not be released on bail.

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

9. However, from the record it reflects that victim i.e. informant of the case is major and married lady and in the FIR she very casually stated that applicant also committed rape with her and similar allegation was levelled by her in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but during investigation Investigation Officer procured a video. In parcha no.7 of the case diary dated 30.07.2023 Investigating Officer noted that from perusal of the video it appears that applicant is committing rape with the victim, therefore, I find force in the argument advanced by learned AGA that alleged video of the applicant belies the defence version of the applicant.

10. Therefore, considering the facts and circumstances of the case, in my view, applicant is not entitled to be released on bail.

11. Accordingly, the instant bail application is rejected.

12. 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 :- 31.10.2023**

AK Pandey