

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46350 of 2023

Applicant :- Pravesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Ganesh Pratap Singh, R.P.S. Chauhan

Counsel for Opposite Party :- G.A., Aman Kumar

Hon'ble Sameer Jain, J.

1. Sri Aman Kumar, Advocate filed his power on behalf of the informant, which is taken on record.

2. Heard Sri R.P.S. Chauhan and Sri Ganesh Pratap Singh, learned counsels for the applicant and Sri Ajeet Kumar Madhashiya, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 558 of 2023, under Sections 452, 376, 506 IPC, Police Station Bhojipura, District Bareilly, during pendency of the trial in the court below.

4. FIR of the present case was lodged against the applicant on 28.8.2023 and according to the FIR on 26.8.2023 in the night at about 12 am when informant was alone in her house, applicant who is her neighbour entered in her room and committed rape with her and after hearing the shriek of the informant people gathered at spot and apprehended the applicant and applicant was handed over to the police.

5. Learned counsel for the applicant submitted that although incident is said to have been taken place on 26.8.2023 at about 12 am in the night but FIR was lodged on 28.8.2023 at 19:02 hours i.e. after two days and this fact itself suggests that entire allegation against the applicant is totally false.

6. He further submitted that although victim in the statements under sections 161 and 164 Cr.P.C. repeated the version of the FIR but entire allegation of rape made against the applicant is totally false.

7. He further submitted that admittedly victim is major and

married lady and actually applicant was having illicit relationship with the victim and at the time of incident during their intimate hours both were caught and applicant was handed over to the police and this fact also reflects even from the statements of the witnesses.

8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 5.9.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that in the FIR as well as in both the statements of the victim recorded during investigation, there is allegation of rape and applicant was apprehended at spot and therefore, he should not be released on bail.

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

11. However, from the perusal of the record, it appears that applicant was apprehended at spot from the roof of the informant and as per allegation he committed rape upon the informant but story narrated by the informant does not inspire any confidence.

12. Further, FIR of the present case was lodged after two days and admittedly informant of the case is major and married lady, therefore, argument advanced by learned counsel for the applicant cannot be completely brushed aside, at this stage.

13. Further, applicant is having no criminal history and he is in jail in the present matter since 5.9.2023.

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

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

16. Let the applicant-**Pravesh Kumar**, 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.

17. 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.

18. 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

Ankita