

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47118 of 2023

Applicant :- Sahil Khan

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

Counsel for Applicant :- Ajay Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1.Sri Sri Prakash Rai, Advocate submits that he has filed his power on behalf of the informant, which is taken on record.

2. Heard Sri Ajay Kumar Pandey, learned counsel for the applicant; Sri Sri Prakash Rai, learned counsel for the informant and Sri Pankaj Kumar, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 145 of 2023, under Sections 328, 376, 386, 506, 419 IPC and 3/4 POCSO Act and Section 3/5(1) U.P. Prohibition of Unlawful Conversion of Religion Act-2021 & Section 67B of I.T. Act, Police Station Chatta, District Agra, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 31.8.2023 against the applicant and one Ruksana Begum and according to the FIR applicant introduced himself as Divyanshu Agarwal and on 21.12.2020 she called the daughter of the informant in a hotel and provided her some intoxicated substance and committed rape with here and also prepared her obscene videos and photographs and threatened her to viral the same and on 21.1.2021 again he committed rape with her in the hotel.

5. It is further mentioned in the FIR that applicant started blackmailing the daughter of the informant and also obtained jewelries and money from her.

6. It is further mentioned in the FIR that applicant has also prepared fake I.D.

7. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and admittedly, at the time of lodgement of the FIR of the present case,

victim was major aged about 19 and half years old and allegation of rape made against the applicant is stated one and no reliance could be placed on such version.

8. He further submitted that actually victim and applicant both were having consensual relationship and since beginning, she was aware that applicant belongs to Muslim community but when this fact was revealed to her parents then FIR of the present case was lodged and thereafter under their pressure, victim also started making allegation of rape against the applicant.

9. He further submitted that although there is also allegation against the applicant that he prepared obscene videos and photographs of the victim but during investigation no such videos and photographs could be recovered.

10. He further submitted that story narrated by the victim in her both the statements recorded during investigation appears to be absurd and no reliance can be placed on such version.

11. He further submitted that except the bald and verbal allegation, there is no evidence on record which can show that applicant ever pressurized the victim to convert her religion and very casually victim stated that applicant also pressurized her to convert her religion.

12. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 1.9.2023.

13. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that at the time of sexual exploitation and rape victim was minor below 18 years of age and she in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape.

14. They further submitted that actually applicant belongs to the Muslim community but he presented himself as a boy of Hindu community and he was continuously threatening the victim to convert her religion and therefore, applicant should not be released on bail.

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

16. However, victim in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape and sexual

exploitation against the applicant but it appears that FIR of the present case was lodged after several years and allegation of rape made against the applicant was of the year 2020-2021 i.e. about 2 years old.

17. Further, even from both the statements of the victim recorded during investigation her consent is reflected and therefore, defence taken by the applicant cannot be completely brushed aside, at this stage.

18. Further, according to the prosecution applicant also prepared obscene videos and photographs of the victim but during investigation no such video or photographs of the victim could be recovered.

19. Further, although victim in her both the statements recorded during investigation also stated that applicant pressurized her for conversion of her religion but except her bald allegation there is no other evidence in this regard on record and it appears that very casually victim made serious allegation of conversion of religion against the applicant.

20. Further, I also find force in the argument advanced by learned counsel for the applicant that story narrated by the victim does not inspire any confidence and applicant is having no criminal history and he is in jail in the present matter since 1.9.2023.

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

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

23. Let the applicant-**Sahil Khan**, 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.

24. 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.

25. 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 :- 6.11.2023

Ankita