

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46666 of 2023

Applicant :- Kamlesh Nishad

Opposite Party :- State of U.P.

Counsel for Applicant :- Atul Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Atul Pandey, learned counsel for the applicant and Sri Ghanshyam Mishra, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 249 of 2023, under Sections 376, 452, 504, 506 IPC, Police Station Kandhrapur, District Azamgarh, during pendency of the trial in the court below.
3. FIR of the present case was lodged against the applicant and others and according to the FIR after entering in the house of the informant applicant committed rape with her.
4. It is further mentioned in the FIR that after hearing the shriek of the informant her sister also arrived at spot but applicant after abusing her ran away.
5. Learned counsel for the applicant submitted that allegation of rape made against the applicant is totally false and admittedly victim i.e. informant of the case is a major girl and story narrated by her in the FIR and in both the statements recorded under sections 161 and 164 Cr.P.C. appears to be improbable.
6. He further submitted that actually applicant and victim both were having love affair but subsequently some dispute arose between both of them and thereafter FIR of the present case was lodged.
7. He further submitted that even the fact of the friendship of the applicant with the informant also reflects from the statement of the victim recorded under section 164 Cr.P.C.
8. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 6.9.2023.

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

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

11. However, in the FIR as well as in both the statements of the victim there is allegation of rape against the applicant but I find force in the argument advanced by learned counsel for the applicant that story narrated by the victim does not inspire confidence.

12. Further admittedly victim is major girl and defence taken by the applicant cannot be completely brushed aside, at this stage, specially after considering the statement of the victim recorded under section 164 Cr.P.C. in which she admitted that she was having friendship with the applicant and applicant told her that he will perform marriage with her.

13. Further, applicant is having no criminal history and he is in jail in the present matter since 6.9.2023.

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-**Kamlesh Nishad**, 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