

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47236 of 2023

Applicant :- Anek Singh Alias Tikki

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

Counsel for Applicant :- Jai Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA for the State apprised the Court that notice has been served to the informant of the case on 30.10.2023. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Jay Prakash Singh, learned counsel for the applicant and Sri Imran Khan, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 10 of 2023, under Sections 376, 504, 506 IPC & 3/4 POCSO Act, Police Station- Sahavar, District- Kasganj, during pendency of the trial in the court below.

4. FIR of the present case was lodged against applicant and his family members under Sections 354, 504, 506 IPC and 7/8 POCSO Act and according to the FIR, when daughter of the informant aged about 14 years had gone to ease herself then applicant forcibly dragged her in the field and made sexual assault upon her and tried to outrage her modesty.

5. Learned counsel for the applicant submitted that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there was any allegation of rape but when her statement was recorded under Section 164 Cr.P.C. then she made allegation of rape.

6. He further submitted that although, applicant is named in the FIR and victim in her statement recorded under Section 161 Cr.P.C. also disclosed the name of the applicant but when her statement under Section 164 Cr.P.C. was recorded then she stated that one unknown boy, who resided in her village, committed rape with her and categorically stated that she did not recognize the boy

and, therefore, there are material contradictions in both the statements of the victim recorded during investigation and it appears that informant falsely implicated the applicant in the present matter.

7. He further submitted that applicant is not having any criminal history and he is in jail since 15.01.2023 i.e. for more than 10 months.

8. 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.

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

10. However, from the ossification test report of the victim, it appears that she was about 17 years' old and she stated in her statement recorded under Section 164 Cr.P.C. that rape was committed upon her but in her statement recorded under Section 164 Cr.P.C. she did not even disclose the name of the applicant and categorically stated that she did not even identify the culprit but surprisingly earlier when her statement was recorded under Section 161 Cr.P.C. then she categorically disclosed the name of the applicant, however, in the statement recorded under Section 161 Cr.P.C. she did not make any allegation of rape, therefore, there are material contradictions in both the statements of the victim recorded during investigation.

11. Further, applicant is not having any criminal history and he is in jail since 15.01.2023 i.e. for more than 10 months.

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

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

14. Let the applicant- **Anek Singh Alias Tikki** 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.

15. 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.

16. 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 :- 21.11.2023

KK Patel