

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47017 of 2023

Applicant :- Sanjai Thakur @ Piku

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

Counsel for Applicant :- Kshitij Pal Singh, Santosh Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Jhamman Ram, learned AGA apprised the Court, on 23.10.2023 notice has been served to the informant. Despite service of notice, none appeared on behalf of the informant.

Heard Sri Kshitij Pal Singh, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 105 of 2023, under Sections 376(2)(N), 504, 506 IPC and Section 67A I.T. Act and 5L/6 POCSO Act, Police Station Bankata, District Deoria, during pendency of the trial in the court below.

3. FIR of the present case was lodged against the applicant under sections 504, 506 and 67A IPC and according to the FIR after the marriage of the daughter of the informant applicant sent her indecent photos and videos to her husband and in-laws.

4. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and although there was no allegation of rape and sexual exploitation against the applicant in the FIR of the present case but when the statement of the daughter of the informant was recorded then she started making allegation of sexual exploitation against the applicant.

He further submitted that on the basis of stale allegation of sexual exploitation applicant has been made accused under the provision of section 376 IPC.

He further submitted that actually applicant and victim were close friends and when this fact was revealed to her in-laws and her husband after her marriage then FIR of the present case was lodged.

He further submitted that there is no evidence on record which can show that applicant ever made viral the alleged obscene videograph of the victim and only some photos were recovered from the mobile of the applicant and it was the videograph of the victim of that time when she was having friendship with the applicant.

He further submitted that applicant is having no criminal history and he is in jail in the present matter since 21.6.2023.

5. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that there is no evidence on record which can show that applicant ever made viral the photos or videos of the victim. Although he submits that during investigation from the mobile phone of the applicant some photos and videos of the victim were recovered.

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

7. It appears that initially FIR of the present case was lodged against the applicant under sections 504, 506 and 67A IT Act but subsequently after the statement of the victim recorded during investigation case was converted under section 376 IPC and 5L/6 POCSO Act and as per the statement of the victim in the year 2013 applicant forcibly committed rape with her and thereafter number of times he sexually exploited her, therefore, it appears that on the basis of stale allegation of rape applicant has been made accused in the present matter under the provisions of Section POCSO Act and section 376 IPC and further, there is no evidence on record which can show that the applicant ever made viral the alleged photograph of the victim and only evidence is that from his mobile some photos of the victim were recovered but as applicant and victim were having relationship which is also reflected from the statement of the victim, therefore, merely on the basis of these photographs it cannot be said that applicant sexually exploited her.

Further, applicant is having no criminal history and he is in jail in the present matter since 21.6.2023.

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

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

10. Let the applicant-**Sanjai Thakur @ Piku** 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.

11. 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.

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 :- 3.11.2023

Ankita