

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47194 of 2023

Applicant :- Istekhar

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

Counsel for Applicant :- Shishir Tandon

Counsel for Opposite Party :- G.A.,Manoj Kumar Tripathi,Vinod Kumar Tirpathi

Hon'ble Sameer Jain,J.

1. Heard Sri Shishir Tandon, learned counsel for the applicant, Sri Vinod Kumar Tripathi, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.150 of 2023, under Sections 452,323,504,506, 376, 377 and 313 IPC and Section 3/4 POCSO Act, Police Station Heempur Deepa, District Bijnor during pendency of the trial.

3. FIR of the present case was lodged against the applicant and his brothers on 18.8.2023 and according to the FIR, applicant continuously committed rape with the minor daughter of the informant and also prepared her obscene photos and by blackmailing her sexually exploited her. It is further mentioned in the FIR that due to sexual exploitation of applicant, daughter of the informant became pregnant and thereafter applicant and his brothers forcibly provided her some medicines for miscarriage and due to medicines given by them her miscarriage was caused.

4. Learned counsel for the applicant submits that entire allegations made against the applicant and his brothers are totally false and baseless and no reliance can be placed on such version.

5. He further submits that although in the FIR and in the statement recorded under Section 164 Cr.P.C. victim stated that

applicant prepared her obscene videos and also caused her miscarriage but during investigation neither any obscene videos of the victim could be recovered nor Investigating Officer could collect any evidence with regard to her alleged miscarriage and these facts clearly suggests that on the basis of false allegation due to previous enmity applicant has been roped in the present matter along with his brothers.

6. He further submits that victim in her statement recorded under Section 161 Cr.P.C. categorically stated that a dispute with regard to land is pending and a case is also pending between both the sides.

7. He further submits that even as per victim, rape was committed about a year before.

8. He further submits that although in the statement of victim there is allegation of rape against the applicant and his three brothers but during investigation their involvement was found false and charge sheet was filed only against the applicant.

9. He further submits that there is a dispute with regard to the age of victim as per her school records and as per one school record, her date of birth is 5.5.2003 and according to another school record, her date of birth is 2.9.2006.

10. He further submits that as per ossification test report victim was around 19 years old. He next submits that at this stage it cannot be said that victim was below 18 years old.

11. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 30.8.2023.

12. Per contra, learned AGA as well as learned counsel for the

informant opposed the prayer for bail and submitted that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and his brothers. They also submitted that as per the record of one school she was child aged about 17 years at the time of incident but both the learned counsels could not dispute the fact that as per another school record the date of birth of the victim is 5.5.2003 and according to it she was more than 20 years at the time of incident and as per ossification test report she was around 19 years old.

13. They further could not dispute the fact that victim in her statement recorded under Section 161 Cr.P.C. admitted the enmity between both the parties with regard to a land.

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

15. However, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and his three brothers but in her statement under Section 161 Cr.P.C. she admitted that a dispute with regard to land is pending between both the sides and she also disclosed in her both the statements recorded during investigation that rape was committed about a year before.

16. Further, there is a dispute of age based on the school records of the victim and as per ossification test report victim is about 19 years old.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since August, 2023.

18. Therefore, considering the facts and circumstances of the

case discussed above, in my view, applicant is entitled to be released on bail.

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

20. Let the applicant-**Istekhar** 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.

21. 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.

22. 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 :- 20.11.2023
SKM