

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47004 of 2023

Applicant :- Satendra Tiwari

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

Counsel for Applicant :- Prabhat Kumar Singh,Rajat Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Counter affidavit filed by the State is taken on record.
2. Sri Jhamman Ram, learned AGA-I, for the State, apprised the Court that notice has been served to the informant of the case on 2.11.2023.
3. Despite service of notice, none appeared on behalf of the informant.
4. Heard Sri Prabhat Kumar Singh, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I, for the State.
5. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.102 of 2023, under Sections 363, 323,328 and 376D(a) IPC and Section 5g/6 POCSO Act, Police Station Maniyar, District Ballia during pendency of the trial.
6. FIR of the present case was lodged on 2.4.2023 against the applicant, co-accused Monti Singh and two unknown persons under Sections 363, 323 and 328 IPC and according to the FIR, on 28.3.2023 at about 1.30 PM in the afternoon when daughter of the informant aged about 15 years was alone in the home, applicant and co-accused Monti Singh and two unknown persons injected some intoxicated injection to her and thereafter slapped her.
7. Learned counsel for the applicant submits that entire

allegation made against the applicant is totally false and baseless and initially in the FIR there was no allegation of rape but when the statements of the victim were recorded during investigation under Sections 161 and 164 Cr.P.C. then she made allegation of gang rape against the applicant and others including co-accused Monti Singh.

8. He further submits that when the statements of the independent witnesses were recorded then they stated that due to dispute with regard to construction of terrace applicant and other co-accused persons have been made accused in the present matter.

9. He further submits that when the second statement of the victim was recorded under Section 161 Cr.P.C. then she also stated that no rape was ever committed and she also admitted the dispute with regard to construction of terrace between both the sides.

10. He further submits that after investigation no charge sheet was filed under Sections 367DA and 328 IPC and Section 5(g)/6 POCSO Act and charge sheet was filed against the applicant and others only under Sections 323, 504 and 506 IPC.

11. He further submits that co-accused Monti Singh has already been released on bail by Coordinate Bench of this Court vide order dated 9.8.2023 passed in Criminal Misc. Bail Application No.29299 of 2023. He placed the order of co-accused Monti Singh during the course of argument which is taken on record and marked as 'A'.

12. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 23.8.2023.

13. Per contra, learned AGA although opposed the prayer for bail but could not dispute the fact that after investigation charge sheet was filed against the applicant, co-accused Monti Singh and Jitendra Yadav only under Sections 323, 504 and 506 IPC and co-accused Monti Singh has already been released on bail by Coordinate Bench of this Court.

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

15. However, victim of the case appears to be a child aged about 15 years and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant and others including co-accused Monti Singh but during investigation the allegation of rape was found false and charge sheet was filed against the applicant, co-accused Monti Singh and Jitendra Singh under Sections 323, 504 and 506 IPC.

16. Further, co-accused Monti Singh and Jitendra Yadav have already been released on bail by Coordinate Benches of this Court and the case of applicant is at par with co-accused Monti Singh.

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-**Satendra Tiwari** 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