

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47401 of 2023

Applicant :- Kallu @ Suneel

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

Counsel for Applicant :- Kamta Prasad, Mahesh Prasad Yadav

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 04.11.2023. Despite service of notice, none appeared on behalf of the informant.
2. Supplementary affidavit filed today on behalf of the applicant is taken on record.
3. Heard Sri M.P. Yadav and Sri Kamta Prasad, learned counsels for the applicant and Sri Imran Khan, learned AGA for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 293 of 2023, under Sections 363, 376(3), 323, 506, 120-B IPC & 04 POCSO Act & 67-B I.T. Act, Police Station- Maudaha, District- Hamirpur, during pendency of the trial in the court below.
5. FIR of the present case was lodged against three persons (non applicant) on 25.07.2023 and according to the FIR, on 22.07.2023 on the instigation of co-accused Rupa and Shivani, co-accused Sumit committed rape with the daughter of the informant aged about twelve and half years. It is further mentioned in the FIR that co-accused Sumit also prepared obscene video of rape of the victim and the said obscene video was also visualized to one Kallu S/o Bacchi Lal (applicant).
6. Learned counsel for the applicant submitted that applicant was not made accused in the FIR, however, in the FIR, it is alleged that he visualized the obscene video of rape of the victim. He further submitted that except the visualization of obscene video of rape, there is no other allegation against the applicant on record. He further submitted that during investigation, applicant was made accused with the aid of Section 67-B I.T. Act but there is no evidence against him on record, even in this regard. He further submitted that admittedly, there is no allegation of rape against the applicant.

7. He further submitted that applicant is not having any criminal history and he is in jail since 13.08.2023.

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. Considering the fact that there is no allegation of rape against the applicant and only allegation against him is with regard to Section 67-B I.T. Act, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant- **Kallu @ Suneel** 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.

13. 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.

14. 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 / KK Patel