

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48083 of 2023

Applicant :- Trimal

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

Counsel for Applicant :- Devesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Amar Nath Vishwakarma, learned Brief Holder, for the State, apprised the Court that notice has been served to the informant of the case on 5.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Devesh Kumar Shukla, learned counsel for the applicant and Sri Amar Nath Vishwakarma, learned Brief Holder, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.54 of 2023, under Sections 147,307,376D, 354 Kha, 452, 323, 504, 506 and 34 IPC and Section 5/6 POCSO Act, Police Station Kasganj, District Kasganj during pendency of the trial.
5. FIR of the present case was lodged against the applicant and four others on 25.1.2023 through an application under Section 156(3) Cr.P.C. moved in September, 2022 and according to the FIR, on 18.3.2022 when daughter of the informant aged about 17 years had gone to filed then applicant and other accused persons tried to commit rape upon her and thereafter they on the same day at about 5.00 PM after entering in the house of the informant, torn the cloths of his daughter and wife. It is further mentioned in the

FIR that on 1.9.2022 when the victim of the case was going towards the field then applicant and other co-accused persons were made indecent gestures.

6. Learned counsel for the applicant submits that the alleged incident is said to have taken place on 18.3.2022 but application under Section 156(3) was moved in the month of September, 2022, i.e., after about six months and this fact itself shows that on the basis of false allegation after six months applicant has been made accused along with others.

7. He further submits that actually informant and his family members made assault and outraged the modesty of the daughter of the applicant and in this regard applicant moved an application under Section 156(3) Cr.P.C. against the informant and others on 28.3.2022 which has been annexed as Annexure-12 to the affidavit filed in support of the instant bail application and only due to this reason after six months informant lodged FIR of the present case through an application under Section 156(3) Cr.P.C. on the basis of false allegation.

8. He further submits that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there is any allegation of rape but when her statement under Section 164 Cr.P.C. was recorded then she very casually stated that applicant and other co-accused persons also inserted their fingers in her vagina.

9. He further submits that false allegation of rape has been levelled against the applicant.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 26.7.2023.

11. Per contra, learned Bried Holder opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

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

13. From the record it reflects that FIR of the present case was lodged through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after six months.

14. Further, from Annexure-12 to the affidavit filed in support of the instant bail application it appears that an application under Section 156(3)Cr.P.C. was also moved on 28.03.2022 against the informant and others with regard to incident dated 18.0.2022 and further, victim in her statement under Section 161 Cr.P.C. did not make any allegation of rape but when her statement under Section 164 Cr.P.C. was recorded then she very casually stated that applicant and other accused persons also inserted their fingers in her vagina.

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

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

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

18. Let the applicant-**Trimal** 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.

19. 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.

20. 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 :- 28.112023

SKM