

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47438 of 2023

Applicant :- Kasim

Opposite Party :- State of U.P.

Counsel for Applicant :- Alok Kumar Pandey, Susheel Kumar Pandey

Counsel for Opposite Party :- G.A., Mohd. Hasham

Hon'ble Sameer Jain, J.

1. Heard Sri Alok Kumar Pandey, learned counsel for the applicant, Sri Mohd. Hasham, learned counsel for the informant and Dr.S.B.Maurya, learned AGA-I, 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.191 of 2023, under Sections 452,376,354 and 506 IPC, Police Station Hajratnagar Garhi, District Sambhal during pendency of the trial.

3. FIR of the present case was lodged against the applicant, his mother and sister and according to the FIR, on 20.8.2023 when informant was sleeping in her house applicant entered in her house and tried to outrage her modesty and after hearing shriek of the informant, her mother arrived and applicant ran away.

4. Learned counsel for the applicant submits that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there was any allegation of rape against the applicant but when the statement of the victim was recorded under Section 164 Cr.P.C. then first time she stated that applicant committed rape with her and this fact clearly suggests that on the basis of false allegation of rape applicant has been made accused in the present matter.

5. He further submits that admittedly victim is a major girl and applicant is not having any previous criminal history and in the present matter he is in jail since 22.8.2023.

6. Per contra, learned AGA as well as learned counsel for the informant although opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

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

8. Considering the fact that victim is a major girl and neither in the FIR nor in the statements of the victim, there was any allegation of rape against the applicant and victim for the first time in her statement under Section 164 Cr.P.C. made allegation of rape against the applicant, 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-**Kasim** 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 :- 22.11.2023
SKM