

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48470 of 2023

Applicant :- Hakim

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Sharma, Ganesh Datta Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Prashant Sharma, Advocate, holding brief of Sri Pankaj Sharma, learned counsel for the applicant and Sri R.N. Srivastava, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 417 of 2022, under Sections 147, 148, 149, 307, 376-D, 354-B, 323, 504, 506 IPC, Police Station- Hathras Gate, District- Hathras, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and five others under Sections 147, 354-B, 504, 506, 323 IPC and according to the FIR, applicant and other accused persons abused and made assault upon the nephew of the wife of the informant and also by tearing cloths of the wife of the informant made her semi nude.
4. Learned counsel for the applicant submitted that totally on the basis of false allegation, applicant has been made accused in the present matter and it appears that there was some dispute with regard to cutting of tree and due to dispute, in the statement recorded under Section 164 Cr.P.C. victim i.e. wife of the informant made false allegation of rape against applicant and co-accused Pappu. He further submitted that there is no allegation of rape either in the FIR or in the statement of the victim recorded under Section 161 Cr.P.C.
5. He further submitted that bail application of co-accused Pappu has already been allowed by co-ordinate Bench of this Court and his bail order has been annexed alongwith the instant bail application.

6. He further submitted that applicant is in jail since 09.10.2023.

7. 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. However, he pointed out that apart from the present case, applicant is having criminal history of two other cases but could not dispute the fact that out of two cases, one case is of Section 174A IPC and another was of the year 2013, in which applicant has already been acquitted.

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

9. Considering the fact that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C there was allegation of rape and first time allegation of rape was levelled against the applicant and co-accused Pappu by the victim in her statement recorded under Section 164 Cr.P.C. and co-accused Pappu has been released on bail, in my view, applicant is entitled to be released on bail.

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

11. Let the applicant- **Hakim** 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.

12. 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.

13. 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 :- 9.11.2023
KK Patel