

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47714 of 2023

Applicant :- Raja @ Raj Kumar @ Shani Katheriya

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

Counsel for Applicant :- Ram Badan Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Kunwar Tejendra Bahadur, learned AGA for the State apprised the Court that on 06.11.2023 notice has been served to the informant of the case. 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 R.B. Maurya, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State-respondent.
4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 755 of 2022, under Sections 363, 366, 376 IPC & 3/4 POCSO Act, Police Station- Kotwali, District- Mainpuri, during pendency of the trial in the court below.
5. FIR of the present case was lodged against applicant and according to the FIR, daughter of the informant aged about 16 years missed from her house and she has also taken Rs. 35,000/- and jewelries from her house. It is further mentioned in the FIR that applicant enticed away the daughter of the informant.
6. Learned counsel for the applicant submitted that on the basis of false allegation, applicant was made accused in the FIR of the present case. He further submitted that even victim during investigation in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not make any allegation against the applicant and categorically stated in her statement recorded under Section 164 Cr.P.C. that no rape was ever committed upon her but in spite of that considering the age of the victim, charge sheet was filed against the applicant.

7. He further submitted that during trial, victim and informant both appeared before the trial court and both have been declared hostile and their statements have been appended in the supplementary affidavit dated 20.11.2022.

8. He further submitted that applicant is not having any criminal history and he is in jail since 08.11.2022 i.e. for last more than a year.

9. 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.

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

11. Considering the fact that even during investigation victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. did not make any allegation of rape against the applicant and during trial, when she and informant both appeared before the trial court then they did not support the prosecution case and both have been declared hostile and applicant is not having any criminal history and he is in jail since November, 2022 i.e. for last more than a year, in my view, applicant is entitled to be released on bail.

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

13. Let the applicant- **Raja @ Raj Kumar @ Shani Katheriya** 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.

14. 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.

15. 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 :- 24.11.2023

KK Patel