

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48019 of 2023

Applicant :- Vikas Kumar

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

Counsel for Applicant :- Manoj Kumar

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 17.11.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.
2. Heard Sri Manoj Kumar, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 437 of 2023, under Sections 376, 506 IPC & 5/6 POCSO Act, Police Station- Shahpur, District- Gorakhpur, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and two others and according to the FIR, applicant committed rape with the daughter of the informant aged about 15 years after taking her in the hotel and also prepared her video and subsequently under the threat of video again committed rape with her.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and however, during investigation, victim repeated the version of the FIR in her statement recorded under Section 161 Cr.P.C. but in her statement recorded under Section 164 Cr.P.C. she stated that she loved the applicant but as at the time of incident her age was found 17 years, therefore, charge sheet was filed against applicant.
6. He further submitted that when informant and victim appeared before the trial court then both did not support the prosecution case and they have been declared hostile and their statements recorded by the trial court have been annexed alongwith the instant bail

application.

7. He further submitted that applicant is not having any criminal history and he is in jail since 19.06.2023.

8. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that during trial informant and victim both have been declared hostile.

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

10. Considering the fact that applicant is not having any criminal history and during trial victim and informant of the case both have been declared hostile, 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- **Vikas Kumar** 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 :- 24.11.2023

KK Patel