

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48177 of 2023

Applicant :- Sushil Kumar Kamthariya

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

Counsel for Applicant :- Dinesh Mishra

Counsel for Opposite Party :- G.A.,Sunil Kumar Gaur

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Dinesh Mishra,learned counsel for the applicant, Sri Sunil Kumar Gaur, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.
3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.423 of 2023, under Sections 376, 328 and 506 IPC and Section 5(1)/6 POCSO Act, Police Station Sadar Bazar, District Agra during pendency of the trial.
4. FIR of the present case was lodged on 23.8.2023 against the applicant and according to the FIR, the daughter of the informant, at present, is aged about 19 years worked along with the applicant since 2018 and for the last four years applicant was continuously sexually exploiting her after administering her medicines.
5. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually daughter of the informant, who is major girl, worked with the applicant but some dispute arose between applicant and informant, i.e., mother of the victim with regard to some money and only due to this reason after four years FIR of the present case was lodged.

6. He further submits that on the basis of stale allegation of sexual exploitation applicant has been made accused after four years and even story narrated by the informant in the FIR as well as by the victim in her both the statements recorded under Section 161 and 164 Cr.P.C. does not appear to be convincing and no reliance can be placed on such version.

7. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 24.8.2023.

8. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that at the time of sexual exploitation by the applicant, victim was minor aged about 16 years and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but both the learned counsels could not dispute the fact that FIR of the present case was lodged after several years and neither in the FIR nor in the statements of victim recorded during investigation any specific date of first rape committed by the applicant is mentioned.

9. However, both the learned counsels pointed out that applicant is also having criminal history of Section 498A IPC.

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

11. However, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape and sexual exploitation against the applicant but FIR of the present case was lodged after 3-4 years and applicant was made accused in the

present matter on the basis of stale allegation of rape.

12. Further, admittedly at the time of lodging the FIR of the present matter, victim was major and the story narrated in the FIR and by the victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. appears to be vague.

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

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

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

16. Let the applicant-**Sushil Kumar Kamthariya** 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.

17. 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.

18. 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 :- 1.12.2023

SKM