

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48028 of 2023

Applicant :- Dr. Ali Mohammad

Opposite Party :- State of U.P.

Counsel for Applicant :- Girja Shanker Sen, Krishna Dutt Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Supplementary affidavit filed on behalf of the applicant in Court today is taken on record.
2. Heard Shri Krishna Dutt Awasthi, learned counsel for the applicant and Shri Santosh Nigam, learned A.G.A. for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.409 of 2018, under Sections 376-D, 313, 406, 420, 34 IPC, Police Station C. B. Ganj, District Bareilly, during pendency of the trial in the court below.
4. FIR of the present case was lodged on 25.07.2018 against applicant and two others and according to the FIR, co-accused Rijwan Husain sexually exploited the informant under the false promise of marriage and on 05.05.2018 applicant alongwith co-accused Rijwan Husain committed rape upon her.
5. Learned counsel for the applicant submits that applicant is brother-in-law of the co-accused Rijwan Husain and only due

to this reason, he has been made accused in the present matter.

6. He further submits that even from the FIR, it appears that informant is a major girl and she was having affair with the co-accused Rijwan Husain but it appears subsequently some dispute arose between both of them and only due to this reason, FIR of the present case was lodged.

7. He further submits that even story narrated by the victim in the FIR as well as in her both the statements recorded under Sections 161 and 164 Cr.P.C. appears to be quite unconvincing and no reliance can be placed on such version.

8. He further submits that even arrest of the applicant was stayed by this Court during investigation.

9. He next submits that however cognizance was taken in the present matter by the court concerned in the year 2019 but applicant could not become aware about this fact as no summons were served upon him and when applicant came to know about the fact that coercive measures are being taken against him then on 19.07.2023, he surrendered before the court concerned and since then he is in jail.

10. He further submits that even co-accused Rijwan Husain has already been enlarged on bail by a Co-ordinate Bench of this Court vide order dated 04.01.2019 passed in Criminal Misc. Bail Application No.46524 of 2018 and bail order of co-accused Rijwan Husain has been annexed alongwith supplementary affidavit filed in support of the instant bail application.

11. He further submits that applicant is not having any criminal history.

12. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

14. However, informant made allegation of rape against applicant in the FIR as well as in her both the statements recorded under Sections 161 and 164 Cr.P.C. but admittedly victim is a minor girl and story narrated by her does not appear to be convincing.

15. Further, there is specific allegation against co-accused Rijwan Husain that under false promise of marriage, he sexually exploited the victim and applicant is brother-in-law of the co-accused Rijwan Husain and therefore, defence taken by applicant cannot be completely ruled out at this stage.

16. Further, even during investigation, arrest of the applicant was stayed by this Court and co-accused Rijwan Husain has already been enlarged on bail by a Co-ordinate Bench of this Court.

17. Further, applicant is not having any criminal history and he is in jail in the present matter since 19.07.2023.

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

19. Accordingly, without expressing any opinion on the

merits of the case, the instant bail application is **allowed**.

20. Let the applicant- **Dr. Ali Mohammad**, 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.

21. 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.

22. 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 :- 8.12.2023

Zafar