

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49746 of 2023

Applicant :- Yogesh

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

Counsel for Applicant :- Dileep Kumar Pandey

Counsel for Opposite Party :- G.A.,Rajesh Kumar Singh

Hon'ble Sameer Jain,J.

1. Heard Sri Dileep Kumar Pandey, learned counsel for the applicant, Sri Rajesh Kumar Singh, learned counsel for the informant and Sri Shatruhan Yadav, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 187 of 2023 (S.T. No. 1589 of 2023), under Sections 363, 366A, 376C, 323, 504, 506 IPC and Section 3/4 POCSO Act, Police Station Datarganj, District Budaun during pendency of the trial.

3. FIR of the present case was lodged on 13.04.2023 against applicant and his elder brother Sunil through an application under Section 156(3) Cr.P.C. dated 18.11.2022 and according to the FIR applicant is the younger brother of son-in-law of the informant and on 17.05.2022 he enticed away the daughter of the informant aged about 13 years and on 19.10.2022 daughter of the informant was recovered from the house of the applicant and after recovery she informed the informant that applicant and his elder brother i.e. co-accused Sunil committed rape with her. It is further mentioned in the FIR that informant tried to lodge the FIR but his FIR was not lodged.

4. Learned counsel for the applicant submitted that on the basis of false allegation after several months applicant has been made accused in the present matter through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after more than a month from the date of alleged recovery of the victim.

5. He next submits that entire story narrated by the informant in the FIR and by victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. is totally false and actually

informant used to drop the victim in the house of the applicant as he wanted that applicant perform marriage with her and in this regard on 20.09.2022 mother of the applicant moved an application to the SSP concerned, which has been annexed as Annexure-12 to the affidavit and from the perusal of the said application, it reflects that when informant dropped the victim at the house of the applicant thereafter she had gone somewhere along with one another boy and she was recovered on 13.09.2022, therefore, it appears that on the basis of false allegation, applicant has been made accused in the present matter.

6. He further submits that bail application of co-accused Sunil has been allowed by the co-ordinate Bench of this Court vide order dated 04.10.2023 passed in Criminal Misc. Bail Application No. 41150 of 2023 and his bail order has been annexed as Annexure-13 to the affidavit and case of applicant is at par with him. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 20.05.2023 i.e. for more than six months.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that victim is hardly 13 years old girl and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant but both the counsels could not dispute the fact that FIR of the present case was lodged after several months through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after about a month from the alleged recovery of the victim. They further could not dispute the fact that co-accused Sunil has already been enlarged on bail and case of applicant is at par with him.

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

9. However, victim as per her school record appears to be about 13 years and she made allegation of rape against the applicant and co-accused Sunil in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but from the record, it further reflects that FIR was lodged after several months through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after about a month from the date of alleged recovery of the victim, therefore, there is inordinate delay in lodging the FIR.

10. Further, co-accused Sunil has already been enlarged on bail

and case of applicant is at par with him. Further, applicant is not having any criminal history and in the present matter he is in jail since 20.05.2023 i.e. for more than six months.

11. Therefore, considering the facts and circumstances of the case discussed above, 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 - **Yogesh** 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 :- 22.11.2023

AK Pandey