

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48408 of 2023

Applicant :- Munabbar

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Johri

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Vikash Tripathi, Advocate holding brief of Sri Kuldeep Johri, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No.384 of 2023, under Sections 376, 504, 506, 323 IPC, Police Station Bhuta, District Bareilly during pendency of the trial.
3. FIR of the present case was lodged on 08.08.2023 against applicant and co-accused Aftab and according to the FIR on 24.07.2023 applicant committed rape with the daughter of the informant aged about 20 years.
4. Learned counsel for the applicant submitted that admittedly victim is about 20 years old and story narrated by the informant in the FIR and in the statements of victim recorded during investigation appears to be quite improbable and no reliance can be placed on such version. He further submits that although as per allegation applicant committed rape with the victim on 24.07.2023 but FIR was lodged on 08.08.2023 i.e. after about two weeks and this fact clearly suggests that totally on the basis of false allegation of rape, applicant has been made accused in the present matter.
5. He further submits that actually some dispute arose between applicant and brother of the victim and on 30.07.2023 brother of the victim lodged FIR against applicant and others under Sections 506, 504, 324, 323 IPC at Case Crime No. 360 of 2023 at Police Station Bhuta, District Bareilly and only due to this enmity subsequently after seven days on the basis of false allegation of rape, applicant has been made accused in the present matter.

6. He further submits that although applicant is having criminal history of three cases but criminal history of the applicant has been explained in the instant bail application and in the present matter applicant is in jail since 04.10.2023.

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

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

9. However, in the FIR as well as in both the statements of the victim there is allegation of rape against the applicant but FIR of the present case was lodged after two weeks and victim of the case is major girl aged about 20 years and I find force in the argument advanced by learned counsel for the applicant that story narrated by her does not inspire any confidence.

10. Further, from the record, it reflects that before lodging the FIR of the present case on 30.07.2023 an FIR was lodged by brother of the victim against the applicant with regard to assault made by applicant, therefore, argument advanced by learned counsel for the applicant that due to this reason subsequently applicant has been made accused in the present matter cannot be completely ruled out at this stage.

11. Further, however applicant is having criminal history of three cases but criminal history of the applicant has been explained in the instant bail application and in the present matter applicant is in jail since 04.10.2023.

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

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

14. Let the applicant - **Munabbar** 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.

15. 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.

16. 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 :- 9.11.2023

AK Pandey