

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48863 of 2023

Applicant :- Harsh Sharma

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

Counsel for Applicant :- Chandan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Jhamman Ram, learned AGA-I for the State apprised the Court that notice has been served upon the informant on 09.11.2023. Despite service of notice, none present on behalf of the informant.

2. Heard Sri Chandan Singh, learned counsel for the applicant and Sri Jhamman Ram, learned AGA-I for the State for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 488 of 2023, under Sections 354, 342, 376 IPC and Section 3/4 POCSO Act, Police Station Jagdishpura, District Agra during pendency of the trial.

4. FIR of the present case was lodged on 19.09.2023 against applicant and according to the FIR on 29.08.2023 applicant committed rape upon the daughter of the informant aged about 16 years. It is further mentioned in the FIR that earlier also applicant committed rape with her.

5. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter. He further submits that victim in her statement recorded under Section 161 Cr.P.C. stated that applicant committed rape with her but when her statement under Section 164 Cr.P.C. was recorded then she categorically stated that applicant never committed rape with her and her father lodged a false report against the applicant.

6. He further submits that even FIR of the present case was lodged after three weeks of the incident and this fact itself shows that on the basis of false allegation, applicant has been made accused in the present matter.

7. He further submits that applicant is not having any criminal

history and in the present matter he is in jail since 08.10.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that FIR of the present case was lodged after three weeks and victim in her statement recorded under Section 164 Cr.P.C. did not make any allegation of rape against the applicant.

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

10. Considering the fact that FIR of the present case was lodged after three weeks and victim in her statement recorded under Section 164 Cr.P.C. categorically stated that applicant did not commit rape upon her and her father lodged false FIR against the applicant, 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 - **Harsh Sharma** 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 :- 29.11.2023
AK Pandey