

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 48454 of 2023

**Applicant :-** Mohammad

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Siddharth Srivastava, Deeksha Gupta

**Counsel for Opposite Party :-** G.A., Jitendra Singh

**Hon'ble Sameer Jain, J.**

1. Sri Jitendra Singh, Advocate, filed his power today on behalf of informant, which is taken on record.
2. Heard Sri Siddharth Srivastava, learned counsel for the applicant, Sri Jitendra Singh, learned counsel for the informant and Sri Ravi Kant Kushwaha, learned AGA for the State.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 300 of 2023, under Sections 366, 504, 352, 506, 376-D IPC, Police Station- Jeanpur, District- Azamgarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and five others and according to the FIR, on 06.05.2023 daughter of the informant aged about 22 years had gone somewhere from her house. It is further mentioned in the FIR that informant was having suspicion that co-accused Umar has enticed her and when informant came to the house of co-accused Umar then applicant, his brother and his other family members abused him.
5. Learned counsel for the applicant submitted that being brother of co-accused Umar, applicant has been made accused in the present matter and victim admittedly is major girl aged about 22 years and she was having love affair with co-accused Umar but under the pressure of her parents, she started making allegation of gangrape against the applicant and other accused persons including co-accused Tanjim. He further submitted that after considering the entire facts of the case, bail application of co-accused Tanjim has been allowed by co-ordinate Bench of this Court vide order dated 17.10.2023. He further submitted that case of applicant is at par with co-accused Tanjim.
6. He further submitted that applicant is not having any criminal

history and she is in jail since 18.08.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim in her both the statements recorded during investigation made allegation of rape against the applicant but could not dispute the fact that she is major girl and she also made allegation of rape against co-accused Tanjim and after considering the entire facts of the case with a very detailed order, co-accused Tanjim has been enlarged on bail by co-ordinate Bench of this Court on 17.10.2023 and case of applicant is at par with him.

8. I have heard both the parties and perused the record of the case.

9. However, it appears to be a case of gang-rape but victim was aged about 22 years and it appears that she was having relationship with co-accused Umar and applicant is the brother of co-accused Umar.

10. Further, after considering the entire facts of the case, with a very detailed order, co-accused Tanjim has been enlarged on bail by co-ordinate Bench of this Court on 17.10.2023 and case of applicant is at par with him.

11. The Apex Court in the case of ***Satender Kumar Antil Vs. CBI & another (2022) 10 SCC 51*** in paragraph no. 98 has observed that-

*Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.*

12. Therefore, considering the observation made by the Apex Court in the case of *Satender Kumar Antil(supra)*, in my view, as co-accused Tanjim has already been released on bail, applicant is also 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- **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.

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**

KK Patel