

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48340 of 2023

Applicant :- Shivansh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Syed Ausaf Un Nabi

Counsel for Opposite Party :- G.A.,Sunil Kumar Upadhyay

Hon'ble Sameer Jain,J.

1. Heard Sri S.A.N. Shah, learned counsel for the applicant, Sri Sunil Kumar Upadhyay, learned counsel for the informant and Sri Manoj Kumar Singh, learned brief holder for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 484 of 2023, under Sections 376, 323 IPC & 67-A I.T. Act, Police Station- Bahjoi, District-Sambhal, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 07.09.2023 against applicant and four others and according to the FIR, on 14.08.2023 co-accused Kasim committed rape upon the informant and also prepared her video and thereafter applicant and other three accused persons posted the alleged obscene video of the informant on social media.
4. Learned counsel for the applicant submitted that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there was any allegation of rape against the applicant and only allegation in these both the documents against the applicant was that he alongwith other accused persons excluding co-accused Kasim, made viral the alleged obscene video of the victim but when the statement of the victim was recorded under Section 164 Cr.P.C. then she stated that under the threat of her obscene video, applicant and other accused persons also committed rape with her.
5. He further submitted that as per the allegation, co-accused Kasim committed rape on 14.08.2023 but FIR was lodged on 07.09.2023 i.e. after three weeks and all these facts clearly suggest that on the basis of false allegation, applicant and other accused persons have been made accused in the present matter .
6. He further submitted that applicant is not having any criminal history and he is in jail since 09.09.2023.

7. Per contra, learned AGA as well as learned counsel for the informant although, 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. Considering the fact that FIR of the present case was lodged after three weeks and neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there was any allegation of rape against the applicant and first time, victim in her statement recorded under Section 164 Cr.P.C. made allegation of rape against the applicant, in my view applicant is entitled to be released on bail.

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

11. Let the applicant- **Shivansh** 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.

12. 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.

13. 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 :- 28.11.2023 / KK Patel