

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48657 of 2023

Applicant :- Mohit

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

Counsel for Applicant :- Sudarshan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Pradeep Kumar, learned A.G.A. for the State-respondent apprise the Court that notice has been served to the informant on 30.10.2023. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Sudarshan Singh, learned counsel for the applicant and Shri Pradeep Kumar, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.275 of 2023, under Sections 364, 354, 376-D IPC & Sections 5G/6 POCSO Act, Police Station Chainpur, District Bareilly, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 22.07.2023 against applicant and three others and according to the FIR, on 21.07.2023 daughter of the informant aged about sixteen years had gone to ease herself and when she was returning then on the way applicant and other accused persons intercepted her and co-accused Sachin and Gantar Pal @ Jayveer has taken her to the house of the applicant where applicant committed rape upon her.

5. Learned counsel for the applicant submits that entire allegations

made against applicant are totally false and however in the FIR there is allegation of rape against the applicant but when statement of the victim was recorded under Section 161 Cr.P.C. then she categorically stated that no rape was committed upon her however she stated that applicant and other accused persons abducted her.

6. He further submits that in the statement under Section 164 Cr.P.C. victim changed her earlier version and stated that applicant committed rape upon her and this fact clearly suggests that victim is not a reliable witness and no reliance can be placed on her version.

7. He further submits that victim is actually major girl aged about eighteen years and applicant and victim both were having friendship and when this fact was revealed to the informant then he lodged the FIR of the present case and in his pressure, victim during investigation started making allegation of rape against the applicant in her statement under Section 164 Cr.P.C.

8. He further submits that the applicant and the victim were close and were having conversation to each other several occasions on phone and this fact is evident from the parcha of the case diary, which has been annexed at page 57 of the paper book.

9. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 11.08.2023.

10. Per contra, learned AGA opposed the prayer for bail and submits that in the FIR as well as in the statement recorded under Section 164 Cr.P.C., there is allegation of gang rape against the applicant and other accused persons and allegation against the applicant is that he particularly committed rape upon the victim

but he could not dispute the fact that victim in her statement recorded under Section 161 Cr.P.C. categorically stated that no rape was committed upon her.

11. He also could not dispute the fact that however as per the school record the age of the victim at the time of incident was around sixteen and a half years but during investigation her ossification test was not conducted.

12. He further could not dispute the fact that the applicant and victim were close to each other and were having conversation several occasions on phone.

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

14. However, from the school record of the victim, it reflects that she was around sixteen and a half years old at the time of incident but during investigation her ossification test was not conducted and further, from the parcha of the case diary, which has been annexed at page 57 of the paper book, it reflects that the applicant and the victim were close to each other and were having conversation several occasions on phone and therefore, defence taken by learned counsel for the applicant cannot be completely ruled out at this stage.

15. Further, in the FIR as well as in the statement of the victim recorded under Section 164 Cr.P.C. however there is allegation of rape against the applicant but victim did not make any allegation of rape in her statement recorded under Section 161 Cr.P.C. and categorically stated that no rape was committed upon her.

16. Further, from the FIR and the other material available on

record including statements of the victim recorded during investigation, it reflects that co-accused persons abducted the victim by taking her on their shoulder but as per prosecution, victim is sixteen and half years and therefore, story narrated by her in her statements and story narrated by the informant in the FIR does not inspire confidence at this stage.

17. Further, applicant is not having any criminal history and he is in jail in the present matter since 11.08.2023.

18. Therefore, considering the facts and circumstances of the case, in my view, applicant is not entitled to be released on bail.

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

20. Let the applicant- **Mohit**, 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.

21. 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.

22. 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 :- 5.12.2023

Zafar