

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48765 of 2023

Applicant :- Balak Ram @ Vijay Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Shri Krishan Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Shri Krishan Yadav, learned counsel for the applicant and Dr.S.B.Maurya, learned AGA-I, for the State.
2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.48A of 2014, under Sections 376D, 506,323,342 and 364 IPC and Police Station Eka, District Firozabad during pendency of the trial.
3. FIR of the present case was lodged against co-accused Dalveer Singh and his unknown associates on 4.3.2014 under Section 364 IPC and according to the FIR, nominated accused along with his associates abducted the niece of the informant.
4. Learned counsel for the applicant submits that initially FIR of the present case was lodged under Section 364 IPC and applicant was not named in the FIR but when during investigation the niece of the informant was recovered and her statement under Section 161 Cr.P.C. was recorded then she disclosed the name of applicant and other accused persons including co-accused Dalveer Singh, who was named in the FIR and stated that rape was committed upon her but in spite of repeated request made by Investigating Officer prosecutrix, i.e., victim of the case did not appear before the learned Magistrate for recording of her

statement under Section 164 Cr.P.C. and thereafter investigation was concluded and it was found that allegations made against the applicant and other co-accused persons were totally false and on 1.4.2014 final report was submitted which was accepted by the court concerned.

5. He further submits that against the order passed by learned Magistrate accepting the final report, the informant of the case filed criminal revision before the court of Sessions and learned revisional court after quashing the order passed by learned Magistrate accepting the final report remanded back the matter with the direction to decide it afresh.

6. He further submits that thereafter on 24.3.2023 the court concerned pursuant to the order passed by the revisional court dismissed the final report filed in the year 2014 and directed for further investigation.

7. He further submits that during further investigation after about nine years the statement of the victim was recorded under Section 164 Cr.P.C. and victim reiterated her earlier version given by her in her statement recorded under Section 161 Cr.P.C. in the year 2014.

8. He further submits that thereafter applicant surrendered before the court concerned on 25.3.2023 and since then he is in jail.

9. He further submits that as applicant was made accused after about nine years and initially involvement of the applicant was found false and co-accused Parvesh, Dalveer Singh and other accused persons have already been released on bail therefore, applicant should also be released on bail.

10. He further submits that however, applicant is having criminal history of seven cases but his criminal history has been explained in paragraph-39 to the affidavit filed in support of the instant bail application and in all the cases applicant is on bail and his bail orders have been appended along with the instant bail application as Annexure-18.

11. He further submits that applicant in the present matter is in jail since 25.8.2023.

12. Per contra, learned AGA opposed the prayer for bail and submits that apart from the present case, applicant is also having criminal history of seven other cases but he could not dispute the fact that in all the cases applicant is on bail.

13. Learned AGA further could not dispute the fact that initially in the present matter final report was submitted and thereafter applicant was again made accused in the present matter after nine years.

14. Learned AGA also could not dispute the fact that even the statement of the victim was recorded under Section 164 Cr.P.C. after about nine years of the alleged incident.

15. Learned AGA further could not dispute the fact that number of other co-accused persons have already been enlarged on bail and the case of applicant is at par with him.

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

17. However, applicant is having criminal history of about seven cases but his criminal history has been explained in the instant bail

application and from the perusal of the same it appears that in all the cases he has been released on bail.

18. Further, in case at hand, applicant was not named in the FIR and during investigation his name was surfaced but after investigation final report was submitted and thereafter in the month of March, 2023, i.e., after about nine years final report was rejected and further investigation was directed.

19. Surprisingly, during first investigation the statement of the victim under Section 164 Cr.P.C. was not recorded and during further investigation her statement under Section 164 Cr.P.C. was recorded, i.e., after about nine years, however, victim in her statement under Section 161 Cr.P.C. which was recorded in the year 2014 and in her statement under Section 164 Cr.P.C. which was recorded in the year 2023 made allegation of rape against the applicant and number of other accused persons.

20. Further, initially final report was filed in the present matter and after nine years during further investigation applicant was again made accused in the present matter and number of other accused persons have already been enlarged on bail and the case of applicant is at par with them.

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

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

23. Let the applicant-**Balak Ram @ Vijay Kumar** 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.

24. 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.

25. 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 :- 8.12.2023
SKM