

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51662 of 2023

Applicant :- Harendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Juned Alam

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Juned Alam, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 98 of 2023 (Case No. 6184 of 2023), under Sections 376, 406, 506 IPC and Section 67A I.T. Act, Police Station Kasya, District Kushi Nagar during pendency of the trial.

3. FIR of the present case was lodged against applicant and unknown persons on 03.02.2023 through an application under Section 156(3) Cr.P.C. dated 22.12.2022 and according to the FIR applicant was very close to the family of the informant and her husband and on 23.01.2022 he committed rape upon her with the help of his unknown associates by administering some intoxicated substance to her. It is further mentioned in the FIR that anyhow informant i.e. victim managed to escape from his custody on 05.02.2022. It is further mentioned in the FIR that applicant also prepared her obscene video and photographs and posted the same on social media.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and this fact is even evident from the FIR of the present case which was lodged after almost a year through an application under Section 156(3) Cr.P.C. He further submits that even applicant under Section 156(3) Cr.P.C. was moved after eleven months.

5. He further submits that admittedly victim is major and married lady and story narrated by her does not appear to be convincing. He next submits that in the FIR victim herself admitted the dispute arose between applicant and her with regard to money and only

due to dispute of money applicant has been made accused in the present matter.

6. He further submits that however according to the prosecution during investigation some obscene photographs and video of the victim were recovered but it appears that these video of the victim were of the victim when she was taking bath and it cannot be said that applicant prepared the same and alleged video was recovered from the mobile of the husband of the victim, therefore, possibility cannot be ruled out at this stage that victim after taking the video provided it to the Investigating Officer.

7. He further submits that even if the allegations with regard to obscene video and photo are accepted then also applicant can only be held liable for the offence under Section 67-A of I.T. Act and maximum punishment provided for the offence under Section 67-A of I.T. Act is five years. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 21.07.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

10. However, in the FIR as well as in both the statements of the informant i.e. victim there is allegation of rape against the applicant but admittedly victim is major and married lady and enmity with regard to non payment of Rs. 10,000/- is admitted between both the parties and it is also reflected even from the FIR itself.

11. Further, as per victim applicant committed rape upon her in the month of January, 2022 but in spite of that she moved application under Section 156(3) Cr.P.C. against the applicant on 22.12.2022 i.e. after eleven months.

12. Further, however, as per prosecution, during investigation some video was recovered but there is no evidence on record which can show that these photographs and video were taken by the applicant. Further, in these photographs applicant was not present, however, it appears from the record that as per statement of some witnesses, who were having facebook account, applicant posted these photographs of the victim on their facebook account,

therefore, it appears that applicant committed an offence under Section 67-A I.T. Act but maximum punishment provided under Section 67-A I.T. Act is five years.

13. Further, applicant is not having any criminal history and in the present matter he is in jail since 21.07.2023.

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

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

16. Let the applicant - **Harendra** 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.

17. 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.

18. 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 :- 2.12.2023
AK Pandey