

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48904 of 2023

Applicant :- Mueen Khan

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

Counsel for Applicant :- Kshitij Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Rajeev Dhar Dwivedi, learned A.G.A. for the State apprise the Court that notice has been served to the informant on 17.09.2023. Despite service of notice none appeared on behalf of the informant.

2. Heard Shri Kshitij Pal Singh, learned counsel for the applicant and Shri Rajeev Dhar Dwivedi, 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.77 of 2023, under Section 376-DA IPC & Sections 5(g)/6 POCSO Act, Police Station Manikpur, District Chitrakoot, during pendency of the trial in the court below.

4. FIR of the present case was lodged against co-accused Mohammad Ishaqaue and according to the F.I.R., co-accused Mohammad Ishaqaue was the teacher of the daughter of the informant aged about 15 years and for last 4-5 months he was continuously sexually exploiting her.

5. Learned counsel for the applicant submits that neither

applicant was named in the F.I.R. nor victim disclosed his name in her first statement recorded under Section 161 Cr.P.C.

6. He further submits that when I.O. recorded the second statement of the victim under Section 161 Cr.P.C. then first time, she disclosed the name of applicant and stated that applicant also committed rape with her alongwith co-accused Mohammad Ishaqaue.

7. He further submits that similar allegation was levelled against the applicant in the statement of the victim recorded under Section 164 Cr.P.C. He further submits that applicant is the maternal uncle of the co-accused Mohammad Ishaqaue and only due to this reason, he has been made accused in the present matter. He further submits that the co-accused Mohammad Ishaqaue has already been released on bail by this Court vide order dated 02.11.2023 passed in Criminal Misc. Bail Application No.46448 of 2023 on the ground that on the date of alleged rape, he was appearing in the examinations and therefore, it appears that totally on the basis of false allegation applicant and his nephew i.e. co-accused Mohammad Ishaqaue have been made accused in the present matter.

8. He further submits that applicant is not having any previous criminal history and he is in jail in the present matter since 30.07.2023, therefore, he may be released on bail.

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

counsel for the applicant.

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

11. However, from the record, it reflects that victim was hardly 15 years old girl and she in her statement recorded under Section 164 Cr.P.C. and in her second statement recorded under Section 161 Cr.P.C. made allegation of rape against the applicant alongwith co-accused Mohammad Ishaqaue but applicant is the maternal uncle of the co-accused Mohammad Ishaqaue and neither he was named in the F.I.R. nor victim in her first statement recorded under Section 161 Cr.P.C. made any allegation against him.

12. Further, co-accused Mohammad Ishaqaue has already been enlarged on bail by this Court with a detailed order.

13. Further, applicant is not having any previous criminal history and he is in jail in the present matter since 30.07.2023.

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

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

16. Let the applicant-**Mueen Khan**, 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 :- 17.11.2023

Zafar