

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48979 of 2023

Applicant :- Majhar Shekh @ Kallu

Opposite Party :- State of U.P.

Counsel for Applicant :- Anjani Kumar Raghuvanshi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Shri Anjani Kumar Raghuvanshi, learned counsel for the applicant and Shri Suresh Bahadur Singh, learned A.G.A. for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.76 of 2023, under Section 376, 506 IPC & Section 67 I.T. Act, Police Station Cholapur, District Varanasi, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 20.02.2023 against applicant and according to the F.I.R., applicant made viral the video recording of the conversation between him and informant and therefore, marriage of the informant was broken. It is further mentioned in the F.I.R. that applicant also prepared her obscene video-graphs under threat and started blackmailing her and also committed rape with her.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and on the basis of vague and improbable story, he has been made accused in the present matter. He further submits that victim is a major girl and she in her statements recorded under Section 161 and 164

Cr.P.C. stated that on 31.01.2021, applicant after entering in her house forcibly committed rape with her but from March, 2019 to April, 2021, applicant was not in India, he was in Jeddah, Saudi Arabia and this fact is apparent from Annexure No.7 of the affidavit filed in support of the instant bail application. He further submits that a specific averment in this regard has been made in para 10 of the affidavit filed in support of the instant bail application.

5. He further submits that even the story narrated by the victim appears to be highly improbable and however, as per allegation applicant prepared the obscene video-graphs of the victim but during investigation, no such obscene video-graph of the victim could be recovered.

6. He further submits that applicant is not having any previous criminal history and he is in jail in the present matter since 22.02.2023 i.e. for more than eight months, therefore, he may be released on bail.

7. Per contra, learned AGA 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 both the parties and perused the record of the case.

9. However, in the F.I.R. as well as in the statements of the victim recorded under Sections 161 and 164 Cr.P.C., she made allegation of rape and sexual exploitation against the applicant but victim i.e. informant of the case is a admittedly a minor girl and story narrated by her does not inspire confidence at this stage.

10. Further, victim in her statements recorded during investigation stated, on 31.01.2021 applicant after entering in her house forcibly committed rape with her but from Annexure No.7 of the affidavit filed in support of the instant bail application, it appears that from March, 2019 to April, 2021, applicant was not in India, he was in Jeddah, Saudi Arabia and in para 10 of the affidavit filed in support of the instant bail application, a specific averment in this regard has also been made by the applicant.

11. Further, applicant is not having any previous criminal history and he is in jail in the present matter since 22.02.2023 i.e. for more than eight months.

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

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

14. Let the applicant-**Majhar Shekh @ Kallu**, 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.

15. 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.

16. 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