

**Court No. - 70**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 49074 of 2023

**Applicant :-** Ishrat Khan @ Unna Khan

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Dileep Kumar Yadav, Pradeep Kumar Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain, J.**

1. Heard Sri Dileep Kumar Yadav, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 172 of 2023, under Sections 376, 506 IPC, Police Station- Fariha, District- Firozabad, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant and according to the FIR, on 28.07.2023 at about 5:00 p.m. in the evening when daughter of the informant aged about 20 years had gone to take some medicines then on the way applicant intercepted her and took her in a room and committed rape with her.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and this fact is evident from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. He further submitted that in her both statements victim categorically stated that applicant did not commit rape with her. He further submitted that however, in the statement recorded under Section 164 Cr.P.C. she stated that applicant made sexually assault upon her. He further submitted that there are material contradictions in both the statements of the victim recorded during investigation.
5. He further submitted that as applicant used to talk with the daughter of the informant, which is also evident from the statement of the victim recorded under Section 161 Cr.P.C., therefore, he has been made accused in the present matter.

6. He further submitted that admittedly victim is major girl aged about more than 20 years and applicant is not having any criminal history and he is in jail since 03.08.2023.
7. Per contra, learned AGA although, 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 the parties and perused the record of the case.
9. However, from the record, initially it appears that in the statement recorded under Section 164 Cr.P.C. victim made allegation of rape against the applicant but subsequently in the same statement she clearly stated that applicant caught hold her and except this, he did nothing with her and in the statement recorded under Section 161 Cr.P.C. she categorically stated that applicant did not commit rape with her. Further, admittedly victim is major girl aged about 20 years.
10. Further, applicant is not having any previous criminal history and he is in jail since 03.08.2023.
11. Therefore, considering the facts and circumstances of the case discussed above, particularly the statements of the victim recorded during investigation, in my view applicant is entitled to be released on bail.
12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.
13. Let the applicant- **Ishrat Khan @ Unna 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.

14. 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.

15. 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 :- 20.11.2023**

KK Patel