

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48969 of 2023

Applicant :- Baldev @ Mintoo

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

Counsel for Applicant :- Kamlesh Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 18.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Kamlesh Kumar Tiwari, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.734 of 2022, under Sections 376, 452, 323,504 and 506 IPC and Section 3/4 POCSO Act, Police Station Khorabar, District Gorakhpur during pendency of the trial.
5. FIR of the present case was lodged against the applicant and his family members and according to the FIR, applicant after entering in the house of the informant made sexual assault upon her daughter aged about 16 years and after that he was locked in a room where maternal grand daughter of the informant was sleeping and applicant tried to strangulate her and caused injuries to her and thereafter informant side broken the door and saved her. It is further mentioned in the FIR that in the meantime parents and other family members of applicant arrived at the house of the

informant and started assaulting the informant and others.

6. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and actually there was a dispute between both the sides and only due to this dispute applicant has been made accused in the present matter.

7. He further submits that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there is any allegation of rape and first time victim in her statement recorded under Section 164 Cr.P.C. made allegation of rape and this fact clearly suggests that totally on the basis of false allegation due to previous enmity applicant has been made accused in the case of rape.

8. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 5.9.2023.

9. Per contra, learned AGA opposed the prayer for bail and submits that victim is hardly 16 years old girl and even applicant caused minor injuries to the minor maternal grand daughter of the informant aged about 6 years but he could not dispute the fact that victim first time in her statement recorded under Section 164 Cr.P.C. made allegation of rape against the applicant and from the record enmity between both the sides also reflects.

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

11. Considering the fact that for the first time victim in her statement under Section 164 Cr.P.C. made allegation of rape against the applicant and from the record it appears that there is

enmity between both the sides, 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-**Baldev @ Mintoo** 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 :- 30.11.2023

SKM