

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50067 of 2023

Applicant :- Sudhir Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Varun Kumar Agnihotri

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Shri Varun Kumar Agnihotri, learned counsel for the applicant and Shri Ghanshyam Mishra, learned Brief Holder for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.100 of 2023, under Sections 376, 506 IPC, Police Station Paschim Sharira, District Kaushambi, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 05.05.2023 against applicant and one unknown person, under Sections 376, 506 I.P.C. through an application under Section 156(3) Cr.P.C. dated 03.02.2023 and according to the F.I.R., informant i.e. victim of the case is a married lady and on 21.01.2023 at about 6:00 p.m. in the evening when she was going to ease, applicant and his unknown associates committed rape with her.

4. Learned counsel for the applicant submits that on the basis of false allegation applicant has been made accused in the present matter through an application under Section 156(3) Cr.P.C. and even application under Section 156(3) Cr.P.C. was moved after thirteen days of the said incident.

5. He further submits that actually informant i.e. victim of the case is highly inimical to the applicant and earlier also she moved an application under Section 156(3) Cr.P.C. on 10.08.2022 against applicant and her application has been annexed as Annexure No.9 to the affidavit.

6. He further submits that court concerned treated the application dated 10.08.2022 moved by the informant as a complaint case and applicant was summoned under Section 376 I.P.C. and during pendency of the trial of the that case only to create pressure informant lodged another F.I.R. through an application under Section 156(3) Cr.P.C. against applicant with almost similar allegation and this fact clearly suggests that applicant has been falsely implicated in the present matter by the informant of the case.

7. He further submits that even from record, it reflects that victim is a major and married lady and story narrated by her does not appear to be convincing.

8. He next submits that apart from the present case and one case lodged by the informant in the year 2022, there is no other criminal history of the applicant and he is in jail in the present matter since 05.07.2023, 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, in the F.I.R. as well as in the statements of the victim

recorded during investigation, there is allegation of rape against applicant but it appears from the record that earlier also in the month of August, 2022 informant of the case moved an application under Section 156(3) Cr.P.C. against the applicant for rape and court concerned treated the application under Section 156(3) Cr.P.C. moved by the informant as criminal complaint and in that case applicant has been summoned under Section 376 Cr.P.C. and he is facing trial of that case and again it appears that F.I.R. of the present case was lodged by the informant through an application under Section 156(3) Cr.P.C. on the basis of fresh allegation of rape. Further, informant i.e. victim of the case is a major and married lady.

12. Further, apart from the present case and one case lodged by the informant in the year 2022, there is no other criminal history of the applicant and he is in jail in the present matter since 05.07.2023.

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

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

15. Let the applicant-**Sudhir Kumar**, 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.

16. 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.

17. 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 :- 23.11.2023
Zafar