

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49129 of 2023

Applicant :- Akash Chauhan

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

Counsel for Applicant :- Munna Tiwari

Counsel for Opposite Party :- G.A.,Anup Kumar Pandey

Hon'ble Sameer Jain,J.

1. Heard Sri Munna Tiwari, learned counsel for the applicant; Sri Shashi Kant Pandey Advocate holding brief of Sri Anup Kumar Pandey, learned counsel for the informant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 594 of 2023, under Sections 323, 504, 506, 376 IPC and 3/4 POCSO Act, Police Station Pipraich, District Gorakhpur, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 12.7.2023 against the applicant and one another and according to the FIR in November, 2019 applicant and other co-accused had forcibly abducted the victim i.e. informant and taken her to the hotel where both committed rape upon her and also prepared her obscene videograph.

4. It is further mentioned in the FIR that under the threat to viral the videograph applicant used to commit rape upon the informant.

5. It is further mentioned in the FIR that applicant also duped Rs. 20,000-30,000/- and also obtained jewelries from the informant.

6. It is further mentioned in the FIR that on 8.7.2023 in the afternoon when informant was coming out from her school then applicant forcibly took her in an orchard and beaten her and inserted his finger in her private part.

7. Learned counsel for the applicant submitted that the entire allegations made against the applicant are totally false and baseless and story narrated by the victim in the FIR as well as in her both the statements recorded during investigation appears to be highly improbably and no reliance can be placed on such version.

8. He further submitted that as per allegation in the month of November, 2019 first time applicant committed rape upon the victim i.e. informant but in spite of that FIR of the present case was lodged on 12.7.2023 i.e. after almost four years.

9. He further submitted that there is allegation that applicant also prepared obscene videograph of the victim and under the threat to viral the same, he sexually exploited her but during investigation no such video of the victim could be recovered.

10. He further submitted that however as per allegation on 8.7.2023 applicant tried to commit rape upon the victim and also inserted her finger in her vagina but this allegation also appears to be false and it appears that only with intention to patch up the delay in lodging the FIR, the story has been mentioned by the victim in the FIR and in her statement.

11. He further submitted that admittedly at the time of lodging the FIR victim was major aged about 20 years and actually informant i.e. victim and applicant were having love affair but some dispute arose between both of them and only due to this reason subsequently after almost four years she lodged FIR of the present case.

12. He further submitted that applicant is having no criminal history and he is in jail in the present matter since 13.7.2023.

13. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail but could not dispute the arguments on facts advanced by learned counsel for the applicant.

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

15. However, victim in the FIR as well as in her both the statements recorded under sections 161 and 164 Cr.P.C. made allegation of rape and sexual exploitation against the applicant but from the record it reflects that as per allegation on 8.9.2021 first time applicant committed rape upon her but FIR of the present case was lodged in July, 2023 i.e. after more than three and half years.

16. Further, even story narrated by the victim in her both the statements recorded during investigation and in the FIR does not appear to be convincing.

17. Further at the time of lodging the FIR victim was major aged about 20 years and considering the annexure-7 of the affidavit which is photograph of applicant and victim, defence taken by the applicant cannot be completely ruled out, at this stage.

18. Further, however, there is allegation that applicant although prepared obscene videograph of the victim and under the threat to viral the same sexually exploited her but during investigation no such videographs of the victim could be recovered.

19. Further applicant is having no criminal history and he is in jail in the present matter since 13.7.2023.

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

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

22. Let the applicant-**Akash Chauhan** 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.

21. 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.

22. 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 :- 13.12.2023/Ankita