

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49472 of 2023

Applicant :- Amit Kumar

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

Counsel for Applicant :- Sunil Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Power has been filed on behalf of Sri Pramod Kumar Singh, Advocate on behalf of opposite party no.4 i.e. informant, today in the Court, which is taken on record.

2. Heard Sri Sunil Kumar Dwivedi, learned counsel for the applicant, Sri Rishabh Tiwari, Advocate holding brief of Sri Pramod Kumar Singh, learned counsel for informant and Sri Santosh Nigam, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 95 of 2023, under Sections 354Ka, 376(3), 323, 506 IPC and Section 3/4 POCSO Act, Police Station Ramghat, District Bulandshahar during pendency of the trial.

4. FIR of the present case was lodged against the applicant on 28.08.2023 and according to the FIR on 26.08.2023 when daughter of the informant aged about 15 years had gone to ease herself then applicant tried to outrage her modesty and after hearing her shriek, father of the victim arrived at spot. It is further mentioned in the FIR that daughter of the informant informed him that on 15.08.2023 applicant committed rape with her by dragging her in his home.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and there are material contradictions in the version of the FIR and in the statements of the victim recorded during investigation. He further submits that as per statement of the victim recorded under Section 161 Cr.P.C., applicant did not commit rape with her and he only outraged her modesty but when her statement under Section 164

Cr.P.C. was recorded then she stated that on 26.08.2023 applicant tried to outrage her modesty but earlier on 15.08.2023 applicant committed rape with her.

6. He further submits that very casually on stale allegation on the instigation of her father, victim started making allegation of rape against the applicant. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 30.08.2023.

7. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submits that victim is hardly 15 years old girl and she in her statement recorded under Section 164 Cr.P.C. made allegation of rape against the applicant but both the counsels could not dispute the fact that there are material contradictions in the story narrated by the victim in the FIR and in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

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

9. However, from the record it reflects that victim at the time of incident was around 15 years old and she in her statement recorded under Sections 164 Cr.P.C. stated that on 15.08.2023 applicant committed rape with her but no such allegation was leveled by her in her earlier statement recorded under Section 161 Cr.P.C. and there was no whisper with regard to rape against the applicant.

10. Further, applicant is not having any criminal history and in the present matter he is in jail since 30.08.2023.

11. Therefore, considering the facts and circumstances of the case discussed above, 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 - **Amit 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.

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 :- 21.11.2023

AK Pandey