

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49654 of 2023

Applicant :- Manish

Opposite Party :- State of U.P.

Counsel for Applicant :- Hemendra Pratap Singh, Anshu Singh

Counsel for Opposite Party :- G.A., Rakesh Kumar Singh

Hon'ble Sameer Jain, J.

1. Heard Sri Hemendra Pratap Singh, learned counsel for the applicant, Sri Rakesh Kumar Singh, learned counsel for the informant and Sri Manoj Kumar Singh, learned Brief Holder for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 670 of 2023, under Sections 366, 376, 506 IPC, Police Station Loni, District Ghaziabad during pendency of the trial.
3. FIR of the present case was lodged against unknown persons and according to the FIR daughter of the informant aged about 15 years had gone somewhere from the house of her Mausi and did not return.
4. Learned counsel for the applicant submitted that on the basis of statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. applicant has been made accused in the present matter. He further submits that victim in her statement recorded under Section 161 Cr.P.C. did not state anything against the applicant and categorically stated that she herself had gone along with applicant and applicant did not commit rape with her but subsequently when her statement under Section 164 Cr.P.C. was recorded then she changed her version and stated that applicant along with three others abducted her on the point of knife and all the persons committed rape with her, therefore, there are material contradictions in the statements of the victim recorded during investigation.
5. He further submits that victim is not literate lady and according to CMO concerned her radiological age was about 18 years. He next submits that actually applicant and victim were having love

affair but when this fact revealed to the informant then on the basis of false allegation under the pressure of informant victim started making allegation of rape against the applicant and others. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 17.08.2023.

6. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim in her statement recorded under Section 164 Cr.P.C. categorically stated that applicant and three others committed gang rape upon her but could not dispute the fact that in the statement recorded under Section 161 Cr.P.C. victim did not state anything against the applicant and categorically stated that applicant never committed rape with her.

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

8. However, victim in her statement recorded under Section 164 Cr.P.C. stated that applicant along with three others abducted her and all the accused persons committed rape with her but earlier when her statement under Section 161 Cr.P.C. was recorded then she categorically stated that she herself had gone along with applicant and applicant did not commit rape with her, therefore, there are material contradictions in the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

9. Further, victim is not literate lady and according to CMO concerned her radiological age was about 18 years. Further, in the light of the statement of victim recorded under Section 161 Cr.P.C. the defence taken by the applicant cannot be completely brushed aside at this stage. Further, applicant is not having any criminal history and in the present matter he is in jail since 17.08.2023.

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

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

12. Let the applicant - **Manish** 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.

13. 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.

14. 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 :- 22.11.2023

AK Pandey