

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50170 of 2023

Applicant :- Umesh Maurya

Opposite Party :- State of U.P.

Counsel for Applicant :- Sharad Kumar Srivastava

Counsel for Opposite Party :- G.A.,Nand Kishor Mishra,Shilpa Ahuja

Hon'ble Sameer Jain,J.

1. Counter affidavit filed today on behalf of the informant is taken on record.
2. Heard Sri Sharad Kumar Srivastava, learned counsel for the applicant, Ms. Shilpa Ahuja, learned counsel for the informant and Sri Imran Khan, learned AGA, for the State.
3. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.385 of 2023, under Sections 452,376,354-B,323,504, 506 and 427 IPC, Police Station Sarnath, District Varanasi during pendency of the trial.
4. FIR of the present case was lodged on 29.8.2023 against the applicant and according to the FIR, the informant, i.e., victim of the case is aged about 25 years and on 27.8.2023 in the night at about 1.30 applicant entered in the house of the informant and after entering in her room tore her cloths and thereafter tried to commit rape by inserting his fingers in her vagina.
5. Learned counsel for the applicant submits that on the basis of false allegation applicant has been made accused in the present matter by the informant of the case.
6. He further submits that as per allegation applicant entered in the house of the informant on 27.8.2023 but in spite of that FIR was

lodged on 29.8.2023, i.e., after two days and this fact itself shows that FIR is based on false facts.

7. He further submits that actually the victim, who is a major girl and applicant both were having love affair for the last 2-3 years but when marriage of the victim was settled by her parents with some other person then some dispute arose between both of them and only due to this reason applicant has been made accused in the present matter.

8. He further submits that even from the statement of the victim recorded during investigation and FIR it appears that very casually victim implicated the applicant by stating that after entering in her room he inserted his fingers in her vagina and it appears that she made allegation against the applicant on the instigation of her parents and no reliance can be placed on such hypothetical version.

9. He further submits that however during investigation Doctor noted two injuries on the left knee of the victim but merely on the basis of such injuries it cannot be said that it was caused by applicant. He further submits, even no duration of the injuries has been mentioned by the Doctor in the medical report.

10. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 30.8.2023.

11. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that victim in the FIR as well as in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that after entering in her room on 27.8.2023 in the night applicant tried to commit rape upon her and inserted his fingers in her vagina.

12. However, both the learned counsels could not dispute the fact that victim is a major lady aged about 25 years. They further could not dispute the fact that except minor injuries on the left knee of the victim Doctor did not note any other injury on her body.

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

14. However, victim, who is informant of the case, made allegation that after entering in her room applicant inserted his fingers in her vagina in the FIR as well as in her both the statements recorded under Sections 161 and 164 Cr.P.C. but the victim is major girl aged about 25 years and on the basis of the story narrated by her at this stage it cannot be said that applicant committed rape upon her as story narrated by her does not appear to be convincing.

15. Further, the defence taken by applicant in the instant bail application cannot be completely ruled out at this stage.

16. Further, however, from the perusal of the medical report it appears that Doctor noted two injuries on the knee of the victim but in my view, merely on the basis of such injuries, it cannot be said that applicant after entering in her room made assault upon her especially when there is no duration of these minor injuries was mentioned by the Doctor.

17. Further, applicant is not having any previous criminal history and in the present matter he is in jail since August, 2023.

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

19. Accordingly, without expressing any opinion on the merits of

the case, the instant bail application is **allowed**.

20. Let the applicant-**Umesh Maruya** 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 :- 1.12.2023

SKM