

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49880 of 2023

Applicant :- Sumit

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

Counsel for Applicant :- Mohd Raghieb Ali

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Imran Khan, learned AGA, for the State, apprised the Court that notice has been served to the informant of the case on 15.11.2023.
2. Despite service of notice, none appeared on behalf of the informant.
3. Heard Sri Mohd. Raghieb Ali, learned counsel for the applicant and Sri Imran Khan, learned AGA, for the State.
4. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.293 of 2023, under Sections 363, 323, 376(3) and 506 IPC, Section 4 POCSO Act and Section 67B I.T.Act, Police Station Maudaha, District Hamirpur during pendency of the trial.
5. FIR of the present case was lodged on 25.7.2023 against the applicant and others and according to the FIR, co-accused Shivani has taken the daughter of the informant aged about 12 years to Panchayat Bhawan after 10-15 days of Holi where applicant committed rape upon her. It is further mentioned in the FIR that other nominated accused persons made video of the alleged incident of rape.
6. Learned counsel for the applicant submits that entire allegation

made against the applicant is totally false and baseless and as per allegation the rape was committed in the month of March, 2023 but in spite of that FIR was lodged on 25.7.2023, i.e, after about four months and this inordinate delay in lodging the FIR itself suggests that on the basis of false allegation of rape applicant has been made accused in the present matter.

7. He further submits that although according to the prosecution, during investigation one screen shot of alleged video from a mobile phone was recovered in which one male and female were in nude condition but from the parcha of the case diary (Annexure-9) it reflects that faces of both male and female were not clear and by seeing the screen shot it could not be reflected that male was the applicant and female was the victim of the present case.

8. He further submits that except the above mentioned recovered screen shot, no other recovery of either videos or photographs could be made during investigation.

9. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 28.7.2023.

10. Per contra, learned AGA opposed the prayer for bail and submits that victim was hardly 13 years old at the time of incident and she in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but he could not dispute the fact that FIR of the present case was lodged after four months and no cogent explanation has been given by the informant in this regard.

11. Learned AGA also could not dispute the fact that the alleged recovered screen shot was not clear and from its perusal it could not be reflected that in screen shot applicant was present along with the victim of the present case.

12. Learned AGA further could not dispute the fact that applicant is not having any previous criminal history and in the present matter he is in jail since July, 2023.

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

14. However, from the record it reflects that victim was child aged about 13 years at the time of incident and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 and 164 Cr.P.C. but the incident is said to have taken place in the month of March, 2023, after about two weeks from the Festival of Holi but FIR of the present case was lodged on 25.7.2023, after about four months.

15. Further, however, during investigation Investigating Officer procured a screen shot from a mobile phone and in the screen shot there was an obscene photographs of male and female but from Annexure-9, the parcha of the case diary which has been annexed with the instant bail application, it reflects that the alleged recovered screen shot was not visible enough to identify the persons, who were in the photographs including applicant and victim.

16. Further, applicant is not having any previous criminal history and in the present matter he is in jail since 28.7.2023.

17. Therefore, considering the facts and circumstances of the case

discussed above, in my view, applicant is entitled to be released on bail.

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

19. Let the applicant-**Sumit** 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.

20. 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.

21. 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 :- 8.12.2023
SKM