Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50009 of 2023

Applicant :- Saurabh Kumar
Opposite Party :- State of U.P.
Counsel for Applicant :- Aftab Alam
Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Aftab Alam, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA for the State.

2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 121 of 2022, under Sections 376D, 344, 506, 120B IPC, Police Station Utraon, District Prayagraj during pendency of the trial.

3. FIR of the present case was lodged on 16.06.2022 against applicant and six others and two unknown persons and according to the FIR on 24.05.2022 the daughter of the informant had gone somewhere from her house and thereafter informant lodged a missing report and on 03.06.2022 when daughter of the informant was found near the railway station then she informed that applicant and co-accused Raju, Rambabu and Sonu committed rape upon her.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and after two weeks from the recovery of the victim, FIR of the present case was lodged and this inordinate delay in lodging the FIR shows that FIR is based on false facts.

5. He further submits that actually victim is a major girl and she had love affair with co-accused Raju, the uncle of the applicant and when this fact was revealed to the family members of the victim, then FIR of the present case was lodged and applicant being nephew of the co-accused Raju also made accused in the present matter.

6. He further submits that although victim in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.

made allegation of rape against the applicant and co-accused Raju, Rambabu and Sonu but story narrated by her does not appear to be convincing and it appears that under the pressure of her parents she started making allegation of rape against applicant too.

7. He further submits that after considering the entire facts of the case bail application of co-accused Sonu and Raju have already been allowed by the co-ordinate Bench of this Court and their bail orders have been annexed along with instant bail application and case of applicant is at par with them. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 19.10.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that victim is major girl and co-accused Sonu and Raju have already been released on bail by the co-ordinate Bench of this Court and case of applicant is at par with them.

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

10. However, in the FIR as well as in both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. there is allegation of rape against the applicant and three others but it appears that FIR of the present case was lodged after two weeks from the date of alleged recovery of the victim.

11. Further, admittedly victim is major girl however she made allegation of rape against applicant and three others in her both the statements but I find force in the argument advanced by learned counsel for the applicant that story narrated by her appears to be improbable.

12. Further, after considering the entire facts of the case, bail application of co-accused Sonu and Raju have already been allowed by the co-ordinate Bench of this Court and case of applicant is at par with them. Further, applicant is not having any criminal history and in the present matter he is in jail since 19.10.2023.

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

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

15. Let the applicant - **Saurabh 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.

16. 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.

17. 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 :- 30.11.2023
AK Pandey

Digitally signed by :-
ANUPAM KUMAR PANDEY
High Court of Judicature at Allahabad