

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50074 of 2023

Applicant :- Ashish Kumar

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

Counsel for Applicant :- Sunil Kumar Misra,Ravindra Kumar Mishra

Counsel for Opposite Party :- G.A.,Kaladhar Singh

Hon'ble Sameer Jain,J.

1. Heard Shri Ravindra Kumar Mishra, learned counsel for the applicant, Shri Ghanshyam Mishra, learned Brief Holder for the State-respondent and Shri Kaladhar Singh, learned counsel for the informant.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.289 of 2023, under Sections 376-DA, 363, 504, 506 IPC, Sections 5/6 POCSO Act & Sections 3(2)(v) S.C./S.T. Act, Police Station Phoolpur, District Prayagraj, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 14.08.2023 against applicant and two others and according to the F.I.R., on 14.08.2023 at about 1:00 a.m. in the night applicant and two other accused persons committed gang rape with the daughter of the informant aged about 14 years. It is further mentioned in the F.I.R. that applicant is aged about 18 years.

4. Learned counsel for the applicant submits that entire allegation made against applicant is totally false and baseless and only being friend of co-accused Ankit Gupta, applicant has been made accused in the present matter.

5. He further submits that actually victim i.e. daughter of the informant was having friendship with co-accused Ankit Gupta and when her mother came to know about this fact, she lodged F.I.R. of the present case and implicated the applicant too.

6. He further submits that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. did not even disclose the name of the applicant and stated that co-accused Ankit Gupta and his associates committed rape with her.

7. He further submits that applicant is the friend of co-accused Ankit Gupta and he was also named in the F.I.R. by the mother of the victim, therefore, victim very well recognized him and this fact clearly suggests that applicant did not participate in the alleged gang rape.

8. He further submits that from the statement of the victim recorded under Section 161 Cr.P.C., it appears that rape was committed on 14.08.2023 but as per her statement recorded under Section 164 Cr.P.C. rape was committed on 13.08.2023 and this discrepancy in date of the alleged incident shows that victim is not a reliable witness and she is not disclosing the correct facts.

9. He next submits that applicant is not having any criminal history and he is in jail in the present matter since 18.08.2023, therefore, he may be released on bail.

10. Per contra, learned Brief Holder and learned counsel for the informant opposed the prayer for bail and submit that victim belongs to S.C. Community and she is hardly fourteen years old and it is a case of gang rape and victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that co-

accused Ankit Gupta alongwith his associates committed rape with her but both the counsels could not dispute the the fact that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. did not even disclose the name of the applicant and even from the F.I.R. applicant is aged about eighteen years.

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

12. However, from the record, it reflects that age of the victim is fourteen years and she made allegation of gang rape in her both the statements recorded under Sections 161 and 164 Cr.P.C. but in her both the statements recorded under Sections 161 and 164 Cr.P.C., she made allegation of rape against co-accused Ankit Gupta and his two associates and she did not disclose the name of the applicant.

13. Further, in her statement under Section 161 Cr.P.C., victim stated that rape was committed upon her on 14.08.2023 but in her statement recorded under Section 164 Cr.P.C., she disclosed that the date of incident 13.08.2023.

14. Further, even from the F.I.R., it reflects that age of the applicant is about eighteen years and at this stage defence taken by the applicant that being friend of co-accused Ankit Gupta, he has been made accused in the present matter, cannot be completely brushed aside.

15. Further, applicant is not having any criminal history and he is in jail in the present matter since 18.08.2023.

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

bail.

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

18. Let the applicant-**Ashish 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.

19. 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.

20. 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 :- 23.11.2023
Zafar