

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50629 of 2023

Applicant :- Biddu @ Aameek

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Kant Tripathi

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

Hon'ble Sameer Jain,J.

1. Sri Jitendra Singh, Advocate, has filed his power on behalf of informant in Court today, which is taken on record.
2. Heard Sri Chandra Kant Tripathi, learned counsel for the applicant, Sri Jitendra Singh, learned counsel for the informant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.300 of 2023, under Sections 366, 504, 506, 352, 376-D IPC, Police Station- Jeanpur, District- Azamgarh, during pendency of the trial in the court below.
4. FIR of the present case was lodged against six persons (non-applicant) and according to the FIR, on 06.05.2023 daughter of the informant aged about 22 years had gone somewhere from her house. It is further mentioned in the FIR that informant was having suspicion that co-accused Umar has enticed her.
5. Learned counsel for the applicant submits that applicant

was not named in the F.I.R. but when victim, who is admittedly a major girl aged about 22 years in her statement under Section 161 Cr.P.C. stated that applicant along with the co-accused Saheb, Mohammad and Tanzeem @ Tanzeel committed rape with her and then applicant was made accused in the present matter.

6. He further submits that similar story narrated by the victim in her statement recorded under Section 164 Cr.P.C.

7. He further submits that bail applications of co-accused Tanzeem @ Tanzeel and Mohammad have already been allowed by co-ordinate Benches of this Court vide orders dated 17.10.2023 and 09.11.2023 passed in Criminal Misc. Bail Application Nos.38356 of 2023 and 48454 of 2023. He further submits that case of applicant is at par with them. The bail orders of co-accused Tanzeem @ Tanzeel and Mohammad are annexed as Annexure No.6 to the affidavit.

8. He further submits that applicant is not having any criminal history and he is in jail since 20.10.2023.

9. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submit that it is a case of gang rape and there is also allegation of rape against the applicant in the statements of the victim recorded during investigation but both the counsels could not dispute the fact that victim is a major girl aged about 22 years and bail applications of co-accused Tanzeem @ Tanzeel and Mohammad have already been allowed and case of applicant is at par with them.

10. I have heard both the parties and perused the record of the case.

11. However, victim, who is a major girl aged about 22 years old made allegation of rape against the applicant and three others in her both the statements recorded under Sections 161 and 164 Cr.P.C. but on 17.10.2023 with a very detailed order, bail application of co-accused Tanzeem @ Tanzeel was allowed by co-ordinate Bench of this Court and after considering the bail order of co-accused Tanzeem @ Tanzeel, this Bench also granted bail to the co-accused Mohammad on 09.11.2023 after considering the observations made by the Apex Court in the case of **Satender Kumar Antil Vs. CBI & another (2022) 10 SCC 51 in (Para 98)**.

12. Therefore, considering the observation made by the Apex Court in the case of **Satener Kumar Antil(supra)**, in my view, as co-accused Tanzeem @ Tanzeel and Mohammad have already been released on bail, applicant is also entitled to be released on bail.

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

14. Let the applicant- **Biddu @ Ameek**, 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.

15. 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.

16. 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 :- 28.11.2023

Zafar