

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50137 of 2023

Applicant :- Akash

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajendra Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri R.K. Yadav, learned counsel for the applicant and Sri Shatrughna Yadav, learned AGA for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 269 of 2023, under Sections 376, 506 IPC, Police Station- Bachharayun, District- Amroha, during pendency of the trial in the court below.

3. FIR of the present case was lodged on 22.09.2023 against applicant and one Shobhit and according to the FIR, on 21.08.2023 co-accused Shobhit had taken the informant for the purpose to provide her job in Haridwar and thereafter when informant was in the room, applicant committed rape with her and on 23.08.2023, applicant dropped the informant at Gajraula Railway Station.

4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and this fact is even evident from the FIR as well as from both the statements of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. as story narrated by her does not appear to be convincing and no reliance can be placed on her version.

5. He further submitted that there are material contradictions in the story narrated by the victim at different stages. He further submitted that in FIR and in the statement of the victim recorded under Section 164 Cr.P.C., allegation of rape was only against the applicant but earlier when the statement of the victim was recorded under Section 161 Cr.P.C. then she also made allegation of rape against co-accused Shobhit alongwith applicant and this fact clearly suggests that informant is not a reliable witness.

6. He further submitted that even FIR of the present case was

lodged after one month and this fact clearly suggests that after one month a false story has been cooked up by the informant.

7. He further submitted that applicant is not having any criminal history and he is in jail since 06.10.2023.

8. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that victim is major and married lady and story narrated by her does not appear to be convincing.

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

10. However, there is allegation of rape in the FIR and in both the statements of the victim recorded during investigation against the applicant but there are material contradictions in both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and victim is major and married lady and story narrated by her does not inspire any confidence.

11. Further, FIR of the present case was lodged after one month from the date of alleged incident of rape and applicant is not having any criminal history and he is in jail since 06.10.2023.

12. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is 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- **Akash** 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 :- 23.11.2023

KK Patel