

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50090 of 2023

Applicant :- Santosh And Another

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

Counsel for Applicant :- Ajendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

(Order on Criminal Misc. Exemption Application)

1. Heard Shri Ajendra Kumar, learned counsel for the applicants and Shri Ghanshyam Mishra, learned Brief Holder for the State-respondent.

2. From the record, it reflects that alongwith instant bail application certified copy of the F.I.R. of the present case has not been appended and exemption application has been filed in this regard.

3. From the perusal of the exemption application filed by the applicants, it appears that learned counsel for the applicants in para 15 of the instant bail application has made an averment that after conviction of co-accused Bobby, the entire record of the case has been transmitted to this Court and only due to this reason applicants could not obtain the certified copy of the F.I.R. of the present case.

4. The reason disclosed in para 15 of the instant bail application for non-filing of the certified copy of the F.I.R. of the present case appears to be sufficient and therefore, exemption application filed by the applicants is hereby **allowed**.

(Order on Criminal Misc. Bail Application)

1. Heard Shri Ajendra Kumar, learned counsel for the applicants and Shri Ghanshyam Mishra, learned Brief Holder for the State-respondent.
2. The instant application has been filed seeking release of the applicants on bail in Case Crime No.165 of 2014, under Section 363, 366, 376-D IPC & Sections 5/6 POCSO Act in S.C. No.404 of 2022, Police Station Sakrauli, District Etah, during pendency of the trial in the court below.
3. Learned counsel for the applicants submits that initially applicants were made accused in the present matter alongwith his family members including their brother Bobby and when victim was recovered and her statement was recorded under Section 161 Cr.P.C. then she made allegation of gang rape against applicants and other accused persons but when her statement under Section 164 Cr.P.C. was recorded by the learned Magistrate then she did not make any allegation against anyone and sated that she loved the co-accused Bobby i.e. brother of the applicants and she did not even disclose the name of the applicants.
4. He further submits that thereafter charge-sheet was filed against co-accused Bobby i.e. brother of the applicants and no charge-sheet was filed against applicants but during trial when victim appeared before the trial court then she again reiterated her earlier version of her statement recorded under Section 161 Cr.P.C. and stated that applicants and other accused committed gang rape with her and on the basis of her statement, trial court summoned the applicants under Section 319 Cr.P.C.

5. He further submits that in the meantime, co-accused Bobby has been convicted and his appeal is pending before this Court.

6. He further submits that applicants are not having any previous criminal history and they are in jail in the present matter since 04.10.2023, therefore, he may be released on bail.

7. Per contra, learned Brief Holder opposed the prayer for bail but could not dispute the fact that applicants were summoned under Section 319 Cr.P.C. and during investigation thier involvement was found false.

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

9. Considering the fact that during investigation involvement of the applicants was found false and they were summoned under Section 319 Cr.P.C. and victim in her earlier statement recorded under Section 164 Cr.P.C. did not make any allegation of rape against the applicants, in my view, applicants are entitled to be enlarged on bail.

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

11. Let the applicants-**Santosh** and **Raju @ Rajeev 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 applicants shall appear before the trial court on the dates fixed, unless their personal presence are exempted.

(ii) The applicants 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 applicants shall not indulge in any criminal and anti-social activity.

12. 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 applicants.

13. 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