

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50349 of 2023

Applicant :- Atul Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudhir Bharti, Brij Kumar Saroj

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Sudhir Bharti, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 445 of 2023, under Sections 376(2), 506 IPC, Police Station- Teela Mode, District- Trans Hindan (commissionerate Ghaziabad), during pendency of the trial in the court below.
3. FIR of the present case was lodged on 03.08.2023 against applicant and two others through an application under Section 156(3) Cr.P.C. dated 16.01.2023 and according to the FIR, on 27.10.2019 applicant committed rape with the informant i.e. victim of the case, who at that time, was 17 years' old and due to sexual exploitation of the applicant, she became pregnant and applicant caused her miscarriage. It is further mentioned that subsequently applicant refused to perform marriage with the informant.
4. Learned counsel for the applicant submitted that on the basis of false allegation after about four years, FIR of the present case was lodged. He further submitted that applicant neither ever committed rape with the victim or sexually exploited her and actually victim and applicant were in live-in-relationship but subsequently some dispute arose between them and thereafter FIR of the present case was lodged. He further submitted that this fact is even evident from both the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.
5. He further submitted that admittedly at present victim is major girl and applicant is not having any criminal history and he is in jail since 17.08.2023.

6. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.
7. I have heard learned counsel for the parties and perused the record of the case.
8. However, in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., informant i.e. victim of the case made allegation of sexual exploitation under the false promise of marriage against the applicant but as per the FIR rape was committed by the applicant first time on 27.10.2019 but in spite of that FIR was lodged on 03.08.2023 i.e. after more than four years.
9. Further, at the time of lodging of FIR, victim was major aged about more than 20 years and in her statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. she stated that she was residing alongwith the applicant in live-in-relationship.
10. Further, applicant is not having any criminal history and he is in jail since 17.08.2023.
11. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.
12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.
13. Let the applicant- **Atul Sharma** 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.
14. 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.

15. 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 :- 24.11.2023

KK Patel