

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50636 of 2023

Applicant :- Arvind

Opposite Party :- State of U.P.

Counsel for Applicant :- Shweta Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Ms. Shweta Pandey, learned counsel for the applicant and Sri Shatrughan Yadav, learned AGA, for the State.

2. The instant bail application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No.181 of 2023, under Sections 376, 452,323,504 and 506 IPC, Police Station Kaila Devi, District Sambhal (Chandausi) during pendency of the trial.

3. FIR of the present case was lodged against the applicant and two others and according to the FIR, applicant after entering in the house of the informant tried to commit rape upon his daughter aged about 14 years. It is further mentioned in the FIR that when after hearing the shriek of the victim nearby people started to gather then applicant ran away.

4. Learned counsel for the applicant submits that entire allegation made against the applicant is totally false and baseless and applicant neither tried to commit rape or committed rape upon the victim.

5. She further submits that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there is any allegation of rape and victim in her statement under Section 161 Cr.P.C. categorically stated that applicant tried to commit rape but

he could not succeed but when her statement under Section 164 Cr.P.C. was recorded then she stated that applicant committed rape upon her and, therefore, there are material contradictions in both the statements of the victim.

6. She further submits that however according to the FIR, the age of the victim at the time of incident was 14 years but during investigation when Investigating Officer procured her school record then her age at the time of incident was revealed as 21 years.

7. She further submits that actually victim and applicant both were having love affair and when family members of the victim witnessed them during their intimate hours then FIR of the present case was lodged.

8. She further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 18.9.2023.

9. Per contra, learned AGA opposed the prayer for bail and submits that victim in her statement under Section 164 Cr.P.C. stated that applicant committed rape upon her but he could not dispute the fact that even as per school record victim is major and she in her statement under Section 161 Cr.P.C. only made allegation of attempt to commit rape.

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

11. Considering the fact that victim appears to be major and there are material contradictions in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. and defence taken by

applicant cannot be completely ruled out at this stage, 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-**Arvind** 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 :- 11.12.2023
SKM