

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52264 of 2023

Applicant :- Naresh @ Kalua

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

Counsel for Applicant :- Jamwant Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Shri Jhamman Lal, learned A.G.A. for the State-respondent apprise the Court that notice has been served to the informant on 27.11.2023. Despite service of notice, none appeared on behalf of the informant to oppose this application for bail.

2. Heard Shri Jamwant Maurya, learned counsel for the applicant and Shri Jhamman Lal, learned A.G.A. for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No.200 of 2023, under Sections 152, 376 IPC & Sections 3/4 POCSO Act, Police Station Mant, District Mathura, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 02.09.2023 against applicant and two others and according to the FIR, on 15.06.2023 applicant and co-accused Suraj committed rape upon the maternal grand daughter of the informant aged about sixteen years. It is further mentioned in the FIR that applicant and other co-accused also received Rs.10,000/- and jewelleryes from the victim by threatening her.

5. Learned counsel for the applicant submits that on the basis of false allegation applicant has been made accused in the present

matter.

6. He further submits that as per prosecution case, applicant and other co-accused committed rape upon the victim on 15.06.2023 but in spite of that FIR of the present case was lodged on 02.09.2023 i.e. after more than two and a half months and this inordinate delay in lodging the FIR itself shows that it is based on false and frivolous facts.

7. He further submits that victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. stated that applicant committed rape upon her but her statements appears to be false and no reliance can be placed on such version.

8. He further submits that even victim in her statement under Section 161 Cr.P.C. did not disclose the date of incident.

9. He further submits that actually informant side and applicant side both were highly inimical to each other and on 05.03.2019, the daughter of the informant lodged an FIR against father of the applicant and others, under Sections 147, 323, 452, 504 I.P.C., P.S. Mant, District Mathura and FIR dated 05.03.2019 is annexed as Annexure No.14 to the affidavit and this time applicant has been roped in the present matter on the basis of false allegation.

10. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 07.09.2023.

11. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that from Annexure No.14 of the affidavit, it appears that dispute between both the sides are pending and further could not dispute the fact that FIR of the present case was lodged after more than two and a half months.

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

13. However, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against the applicant but FIR of the of the present case was lodged after more than two and a half months. Further, victim appears to be illiterate girl and as per C.M.O. concerned her radiological age is about 18 years and story narrated by her does not appear to be convincing.

14. Further, applicant is not having any criminal history and he is in jail in the present matter since 07.09.2023.

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

16. Let the applicant- **Naresh @ Kalua**, 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.

17. 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.

18. 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 :- 6.12.2023

Zafar