

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51368 of 2023

Applicant :- Deepak @ Fauji

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

Counsel for Applicant :- Kapil Tyagi

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 of the case on 24.11.2023. Despite service of notice, none appeared on behalf of the informant.

2. Heard Shri Kapil Tyagi, 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.991 of 2022, under Sections 363, 354, 354(D), 376D, 506 IPC & Sections 5g/6 POCSO Act, Police Station Hapur Kotwali, District Hapur, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 12.11.2022 against applicant and according to the FIR, on 10.11.2022 applicant outraged the modesty of the daughter of the informant aged about sixteen years, who is student of class 10th.

5. Learned counsel for the applicant submits that entire allegations made against applicant are totally false and baseless and in the FIR, there is no allegation of rape but when the statements of the victim was recorded under Sections 161 and 164 Cr.P.C. then she

made allegation of gang rape against applicant and two others.

6. He further submits that actually victim and applicant both were studied in the same school and both were having friendship but informant was not happy with their friendship and therefore, she lodged FIR of the present case against applicant.

7. He further submits that when the statement of the father of the victim was recorded under Section 161 Cr.P.C. then he made allegation of sexual assault against the applicant and further stated that on his instigation, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. implicated two other co-accused persons Vipul and Ashish and this fact clearly suggests that victim is not a reliable witness and she is tutored one.

8. He further submits that even story narrated by victim in her both the statements during investigation, does not appear to be convincing and however, it is a case of gang rape but in spite of that doctor did not find any injury on her person.

9. He further submits that when the statement of the doctor was recorded under Section 161 Cr.P.C. during investigation by the Investigating Officer, which has been annexed at page 75 of the paper book then she stated that during her medical examination, she did not find any sign of rape.

10. He further submits that even from the statement of Amit Kumar, who is teacher of the applicant and victim, which has been annexed alongwith the instant bail application, it appears that on number of occasions both i.e. applicant and victim remained absent from school simultaneously and therefore, the defence taken by the applicant with regard to the friendship of the applicant

with the victim also finds support from the statement of the teacher.

11. He next submits that applicant is not having any criminal history and he is in jail in the present matter since 18.11.2022 i.e. for last more than a year.

12. Per contra, learned AGA opposed the prayer for bail and submits that it is a case of gang rape and victim, who is hardly thirteen years and ten months old girl made allegation of gang rape against applicant and co-accused Vipul and Ashish in her both the statements recorded under Sections 161 and 164 Cr.P.C. however, he fairly conceded that during investigation her ossification test was not conducted and even from the victim, she studied in class 10th.

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

14. However, as per school record, victim appears to be thirteen years and ten months old girl and she made allegation of gang rape against applicant and co-accused Vipul and Ashish in her both the statements recorded under Sections 161 and 164 Cr.P.C. but there is no allegation of rape in the FIR of the present case, which was lodged by her mother on the basis of the information given by the victim.

15. Further, when the statement of the father of the victim was recorded under Section 161 Cr.P.C. then he again made only allegation of sexual assault against the applicant and further stated that on his instigation during investigation, victim in her both the statements recorded under Sections 161 and 164 Cr.P.C. disclosed

the name of two co-accused Vipul and Ashish and in fact they never committed rape upon her therefore, I find force in the argument advanced by learned counsel for the applicant that victim given her statement during investigation on the instigation of her parents.

16. Further, the defence taken by the applicant in the present matter is that as he was having friendship with the victim, who also studied in the school of the applicant and only due to this reason, he has been made accused in the present matter as her parents did not like their friendships and the fact of friendship finds support even from the statement of the teacher of the school, which was recorded by the Investigating Officer during investigation, which has been annexed at page 54 of the paper book.

17. Further, however victim in her both statements recorded during investigation made allegation of gang rape against applicant and two others but doctor did not find any injury on her person and when the statement of the doctor was recorded under Section 161 Cr.P.C. then she categorically stated that during medical examination of the victim, she did not find any sign of rape.

18. Further, applicant is not having any criminal history and he is in jail in the present matter since 18.11.2022 i.e. for last more than a year.

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

20. Let the applicant- **Deepak @ Fauji**, 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.

21. 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.

22. 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 :- 1.12.2023

Zafar