

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51493 of 2023

Applicant :- Riyasat

Opposite Party :- State of U.P.

Counsel for Applicant :- Pankaj Bharti

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Pankaj Bharti, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 423 of 2023, under Sections 328, 376-D IPC, Police Station- Budhana, District- Muzaffar Nagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 17.09.2023 against one Ankit Kumar and his one unknown associate and according to the FIR, on 16.09.2023 at about 10:00 a.m. in the morning nominated accused Ankit Kumar by playing fraud, provided cold drink to the wife of the informant and after that when she fainted then he has taken her to the forest and thereafter called his three unknown friends and all the accused persons committed gang rape upon his wife.
4. Learned counsel for the applicant submitted that applicant was not named in the FIR but on 23.09.2023 informant moved an application to the Investigating Officer and stated that today his wife i.e. victim disclosed the name of the applicant and two others and they were friend of co-accused Ankit Kumar and thereafter applicant was made accused in the present matter.
5. He further submitted that when the second statement of the informant was recorded by the Investigating Officer during investigation then he stated that he himself after inquiry came to know that applicant also involved in the present crime alongwith other accused persons and on the basis of photograph of the applicant, victim identified him.
6. He further submitted that first statement of the victim under

Section 161 Cr.P.C. was recorded even before the application dated 23.09.2023 but she did not disclose the name of the applicant and this fact clearly suggests that subsequently on 23.09.2023 after about a week, applicant has been made accused in the present matter only due to the reason that he was the friend of one of the accused persons.

7. He further submitted that however, it is a case of gang rape but doctor did not find any injury on the private part of the victim, however, he submitted that victim was admitted to the hospital with regard to her stomach pain.

8. He further submitted that applicant is not having any criminal history and he is in jail since 27.09.2023.

9. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that on the basis of application dated 23.09.2023 moved by the informant, applicant was made accused in the present matter. He further could not dispute the fact that even earlier when the statement of the victim was recorded under Section 161 Cr.P.C. then she did not disclose the name of the applicant, however, learned AGA pointed that applicant is also having criminal history of one case but he fairly conceded that previous case is of minor offence.

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

11. However, from the statement of the victim recorded under Section 164 Cr.P.C. and her second statement recorded under Section 161 Cr.P.C., it appears that she made allegation of rape against the applicant and two others but when the first statement of the victim was recorded under Section 161 Cr.P.C. then she did not disclose the name of the applicant and it appears from the record that for the first time name of the applicant was surfaced from the application moved by the informant dated 23.09.2023 and in the application, he stated that on the basis of information furnished by his wife i.e. victim, he came to know that applicant is the person, who committed rape alongwith other accused persons upon his wife.

12. Further, applicant is not having any criminal history and he is in jail since 27.09.2023 and medical report of the victim does not corroborate the allegation of gang rape.

13. Therefore, considering the facts and circumstances of the case

discussed above, particularly the manner of disclosure of name of the applicant in the present matter, in my view applicant is entitled to be released on bail.

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

15. Let the applicant- **Riyasat** 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.

16. 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.

17. 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

KK Patel