

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52474 of 2023

Applicant :- Abhishek Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Pavan Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Shri Pavan Kumar Srivastava, learned counsel for the applicant and Shri Ravi Kant Kushwaha, learned A.G.A. for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.264 of 2023, under Sections 376,328, 506 IPC & Section 67 I.T. Act, Police Station Madhuban, District Mau, during pendency of the trial in the court below.
3. FIR of the present case was lodged on 16.10.2023 against applicant and two others and according to the FIR, applicant was neighbour of the informant and he hacked the facebook and instagram accounts of the informant and tried to make physical relationship with her and one day, he administered her intoxicating substance and made physical relationship with her and also prepared her video clip and also threatened the informant that he will commit her murder and after committing suicide will implicate her.
4. Learned counsel for the applicant submits that story narrated by the victim i.e. informant of the case appears to be vague and false.
5. He further submits that victim is admittedly a major girl and her

consent is quite apparent from her both the statements recorded under Sections 161 and 164 Cr.P.C.

6. He further submits that in her statement under Section 164 Cr.P.C. victim categorically stated that she developed physical relationship with the applicant but after some dispute arose between both of them and applicant wanted to perform marriage with her but she refused and thereafter applicant posted her videos and photographs on facebook.

7. He further submits that in fact applicant never posted nude photographs of the victim on her facebook and when applicant and victim were having cordial relationship then at that time in anger victim herself sent these photographs.

8. He further sbumits that from perusal of the entire evidence available on record, no offence under Section 376 I.P.C. against the applicant is made out and maximum punishment provided for offence under Section 67 I.T. Act is three years.

9. He further submits that applicant is not having any criminal history and he is in jail in the present matter since 08.10.2023.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. Considering the fact that victim of the case is a major girl and from her statement recorded under Section 164 Cr.P.C. her consent is quite apparent and maximum punishment provided for offence

under Section 67 I.T. Act is three years and applicant is in jail since 08.10.2023, in my view, applicant is entitled to be released on bail.

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

14. Let the applicant- **Abhishek Kumar**, 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.

15. 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.

16. 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 :- 7.12.2023
Zafar