

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52671 of 2023

Applicant :- Rohit Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Sarvesh Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Shri Sarvesh Kumar Dubey, learned counsel for the applicant and Dr. S. B. Maurya, learned A.G.A.-I for the State-respondent.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No.151 of 2023, under Sections 376-D, 342, 504, 506 IPC, Police Station Indargarh, District Kannauj, during pendency of the trial in the court below.

3. F.I.R. of the present case was lodged on 06.06.2023 against applicant and his brother Rahul and three unknown persons through an application under Section 156(3) Cr.P.C. dated 29.03.2023 and according to the F.I.R., informant aged about 22 years was abducted by the applicant and his associates including his brother on 29.07.2022 and they have committed rape upon her and thereafter confined her for several months and on 08.01.2023 informant anyhow escaped from their possession.

4. Learned counsel for the applicant submits that entire allegation made against applicant is totally false and baseless

and FIR of the present case was lodged through an application under Section 156(3) Cr.P.C. after several months and even application under Section 156(3) Cr.P.C. was moved on 29.03.2023 i.e. after almost three months from the date of alleged escape of victim from the possession of the applicant and others.

5. He further submits that in statement under Section 161 Cr.P.C. victim stated that she is a married lady and could not even disclose the date and time of the alleged incident and stated that she could not recollect the same however in her statement under Section 164 Cr.P.C. she again reiterated the version of the FIR.

6. He further submits that on the basis of false allegation applicant has been made accused in the present matter and actually victim is a married lady and after marriage, she developed relationship with the applicant and thereafter some dispute arose between applicant and victim and she had broken her relationship with the applicant and this fact is even evident from Annexure No.6 of the affidavit, which is an affidavit of the victim dated 22.11.2022.

7. He further submits that applicant is not having criminal history and he is in jail in the present matter since 01.10.2023.

8. Per contra, learned AGA opposed the prayer for bail and submits that victim in the FIR as well as in her both the statements recorded under Sections 161 and 164 Cr.P.C. made allegation of rape against applicant and others but could not

dispute the fact that FIR of the present case was lodged through an application under Section 156(3) Cr.P.C. after several months and even application under Section 156(3) Cr.P.C. was moved after almost three months from the date of alleged escape of the victim from the possession of the applicant and others.

9. He further could not dispute the fact that from Annexure No.6 of the affidavit, it appears, victim and applicant were having relationship but thereafter she had broken her relationship with the applicant.

10. He further could not dispute the fact that victim is a married lady and applicant is not having criminal history and he is in jail in the present matter since 01.10.2023.

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

12. However, in the FIR as well as in both the statements of the victim recorded under Sections 161 and 164 Cr.P.C. there are serious allegation of gang rape against applicant and others but from perusal of the FIR, it reflects that the FIR of the present case was lodged through an application under Section 156(3) Cr.P.C. after several months and even application under Section 156(3) Cr.P.C. was moved after almost three months from the date of alleged escape of the victim from the possession of the applicant and others.

13. Further, statement of the victim recorded under Section 161 Cr.P.C. appears to be vague and in this statement she did not even disclose the date and time of the alleged incident and

stated that she could not recollect the date of incident.

14. Further, from Annexure No.6 of the affidavit, it appears that victim and applicant were having relationship but thereafter she had broken her relationship with the applicant, therefore, defence taken by learned counsel for the applicant cannot be completely disbelieved at this stage.

15. Further, applicant is not having criminal history and he is in jail in the present matter since 01.10.2023.

16. Therefore, considering the facts and circumstances of the case, discussed above, in my view, applicant is entitled to be released on bail.

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

18. Let the applicant- **Rohit 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.

19. 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.

20. 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 :- 8.12.2023
Zafar