

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53387 of 2023

Applicant :- Rahul

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

Counsel for Applicant :- Rakesh Tripathi I

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Sri Rajeev Dhar Dwivedi, learned AGA for the State apprised the Court that notice has been served upon the informant on 17.11.2023. Despite service of notice, none present on behalf of the informant.
2. Heard Sri Rakesh Tripathi, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.
3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 354 of 2020, under Sections 376(3), 323 IPC and Section 3/4 POCSO Act, Police Station Hapur Dehat, District Hapur during pendency of the trial.
4. FIR of the present case was lodged against applicant on 24.08.2020 and according to the FIR on 23.08.2020 at about 9.00 PM in the evening applicant has taken the daughter of the informant aged about 16 years to his home and committed rape upon her and also beaten her.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and only due to village party bandi, applicant has been made accused in the present matter. He further submits that however victim in her both the statements recorded during investigation stated that applicant committed rape upon her but story narrated by her appears to be unconvincing.
6. He further submits that in the statement recorded under Section 161 Cr.P.C. victim categorically stated that due to the assault made by the applicant she also sustained injury but her medical report suggests that she did not sustain any injury.

7. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 29.08.2020 i.e. for last more than three years.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that doctor during medical examination did not find any injury on the body of the victim and applicant is in jail for last more than three years.

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

10. However, from the record, it reflects that victim of the case at the time of incident was about 16 years old and she made allegation of rape against the applicant in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. but in the statement recorded under Section 161 Cr.P.C. she also categorically stated that applicant beaten her and due to the assault made by her she also sustained several injuries on her body and her medical report suggest, she did not sustain any injury.

11. Further, applicant is not having any criminal history and in the present matter he is in jail since 29.08.2020 i.e. for last more than three years.

12. Therefore, considering the facts and circumstances of the case, particularly the long incarceration of applicant of more than three years, 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 - **Rahul** 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 :- 13.12.2023

AK Pandey