

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52440 of 2023

Applicant :- Gajanand Pandey

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Abhishek Srivastava, Pradeep Kumar Mishra, Sr. Advocate, Yatharth Nath Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Pawan Kumar Dubey, learned counsel for the informant submits that he has filed his power on behalf of the informant, today in the office of this Court, therefore, his name is not shown in the cause list.

2. Heard Sri Vinay Saran, learned Senior Advocate assisted by Sri Pradeep Kumar Mishra and Sri Abhishek Srivastava, learned counsels for the applicant, Sri Pawan Kumar Dubey, learned counsel for the informant and Sri Amar Nath Vishwakarma, learned Brief Holder for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 267 of 2022, under Sections 376, 506 IPC, Police Station Handia, District Prayagraj during pendency of the trial.

4. FIR of the present case was lodged on 15.05.2022 under Sections 354C, 354B, 506 IPC against applicant and his wife (in-laws of the informant) and according to the FIR marriage of the informant was performed with the son of the applicant on

23.4.2019 and after marriage applicant and his family members tortured her for want of dowry but with the intervention of some people, compromise was executed between both sides and thereafter applicant has taken the victim to her matrimonial home but after 2-3 days, she was again being tortured.

5. It is further mentioned in the FIR that applicant started outraging the modesty of his daughter-in-law i.e. informant of the case and on 27.04.2022 when informant was going to sleep in her room and her husband was not present at home, applicant entered in her room and under threat to viral her photographs, which was taken by the applicant while she was taking bath, made sexual assault upon her.

6. Learned Senior Advocate appearing on behalf of the applicant submitted that applicant is father-in-law of the informant and on the basis of false allegation, he has been made accused in the present matter.

7. He further submit that marriage of the informant was performed with the son of applicant on 23.04.2019 and after that some dispute arose and on 05.08.2021 applicant himself moved an application against the informant before the police and on 22.08.2021 informant lodged FIR against the applicant and his son i.e her husband under Section 498A, 323 IPC and 3/4 D.P. Act (Annexure-3) and thereafter on 01.11.2021 compromise was executed between husband and wife (Annexure-4) and thereafter informant started living in her matrimonial home but again some dispute arose between her and applicant side and on 15.05.2022 she lodged FIR of the present case against applicant and his wife i.e. her in-laws.

8. He next submits that only due to the matrimonial dispute,

applicant has been made accused in the present matter. He further submits that neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there is any allegation of rape against the applicant and there was only allegation of outraging the modesty of the informant but when her statement under Section 164 Cr.P.C. was recorded then victim i.e. informant of the case changed her earlier version and stated that applicant also committed rape upon her.

9. He further submits that as per allegation on the basis of obscene video of the victim, which was taken by the applicant while she was taking bath, applicant made sexual assault and committed rape upon her but there is no evidence on record that these photographs were either taken by the applicant or applicant sent the same to her or make it viral to anyone.

10. He further submits that as per victim the son of the applicant i.e. her husband sent these photographs to her mobile. He next submits that if alleged video was taken by her husband and sent her to her mobile then applicant being father-in-law cannot be held liable for that.

11. He next submits that due to matrimonial dispute informant continuously trying to implicate the applicant in false criminal cases and after lodging FIR of the present case she on 25.01.2023 moved an application under Section 156(3) Cr.P.C., which was treated by the court concerned as a complaint.

12. He next submits that even from the perusal of the statements of the victim recorded during investigation, it appears that story narrated by her appears to be unconvincing and no reliance can be placed on such version.

13. He further submits that applicant is about 60 years old person

and he is not having any previous criminal history except the complaint and FIR lodged by the victim i.e. his daughter-in-law and in the present matter he is in jail since 20.10.2023.

14. Per contra, learned AGA as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is father-in-law of the victim i.e. informant of the case and when she was taking bath then applicant after taking her indecent video and photographs started blackmailing her and committed rape upon her.

15. Learned counsel for the informant vehemently submitted that considering the relationship of the applicant with the victim and the fact that the photographs of the victim, which was taken by the applicant, sent by the son of the applicant to victim, he should not be released on bail.

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

17. From the perusal of record, it reflects that applicant is father-in-law of the victim and some matrimonial dispute is pending between both sides and FIR of the present case was lodged on 15.05.2022 and before lodging the FIR of the present case on 22.08.2021 informant lodged FIR against applicant his son under Section 498A IPC and other sections.

18. Further, neither in the FIR nor in the statement of the victim recorded under Section 161 Cr.P.C. there was any allegation of rape against the applicant and first time victim i.e. daughter-in-law of the applicant made allegation of rape against the applicant in her statement recorded under Section 164 Cr.P.C.

19. Further, even as per FIR, applicant made sexual assault upon

his daughter-in-law i.e. informant of the case on 27.04.2022 but FIR of the present case was lodged on 15.05.2022 i.e. after more than two weeks.

20. Further, after lodging the FIR of the present case victim also filed an application under Section 156(3) Cr.P.C. against the applicant and his family members on 25.01.2023, which was treated by the court concerned as complaint.

21. Further, as far as the allegation with regard to obscene video and photographs is concerned, at this stage argument advanced by learned counsel for the applicant cannot be completely brushed aside as there is no evidence on record, which can show that applicant either himself took the photographs of the victim while she was taking bath or he himself either sent it to anyone or sent to the victim.

22. Further, apart from the present case and complaint lodged by the informant with regard to matrimonial dispute, applicant is not having any previous criminal history and in the present matter he is in jail since 20.10.2023.

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

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

25. Let the applicant - **Gajanand Pandey** 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.

26. 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.

27. 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

AK Pandey