

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52994 of 2023

Applicant :- Shiv Chandra Adiwasi

Opposite Party :- State of U.P.

Counsel for Applicant :- Niraj Kumar Dwivedi, Ashish Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Heard Sri Niraj Kumar Dwivedi, learned counsel for the applicant and Sri Rajeev Dhar Dwivedi, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 342 of 2023, under Sections 452, 376, 323, 504, 506 IPC, Police Station Karchhana, District Prayagraj during pendency of the trial.
3. FIR of the present case was lodged against applicant 18.09.2023 under Sections 452, 354B, 323, 504 IPC and according to the FIR on 07.09.2023 at about 11 PM in the night after entering in the house of informant applicant made assault upon her and torn her clothes and also outraged her modesty and when informant raised alarm then her mother-in-law arrived and thereafter applicant ran away.
4. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and admittedly victim is major and married lady and on the basis of false allegation, applicant has been made accused in the present matter. He further submits that FIR of the present case was lodged after eleven days.
5. He further submits that actually applicant and victim were having relationship but on the date of incident when mother-in-law of the victim witnessed the applicant along with victim in her room then under her pressure victim had to lodge the FIR of the present case.
6. He further submits that victim in the FIR did not make any allegation of rape against the applicant and in the statement

recorded under Section 161 Cr.P.C. also did not make allegation in clear terms that applicant committed rape upon her but in the statement recorded under Section 164 Cr.P.C. stated that applicant committed rape upon her and this fact clearly suggests that she is not a reliable witness and story narrated by her appears to be unconvincing.

7. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 22.09.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that victim i.e. informant of the case is major and married lady and there are contradictions in the statements of the victim recorded during investigation and even story narrated by her appears to be unconvincing.

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

10. Considering the fact that victim i.e. informant of the case is major and married lady and story narrated by her does not appear to be convincing and defence taken by the applicant cannot be completely ruled out at this stage and there are contradictions in the statements of the victim recorded during investigation, in my view, applicant is entitled to be released on bail.

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

12. Let the applicant - **Shiv Chandra Adiwasi** 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.

13. 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.

14. 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 :- 11.12.2023

AK Pandey