

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52725 of 2023

Applicant :- Kapil @ Kafeel

Opposite Party :- State of U.P.

Counsel for Applicant :- Jai Kishan, Vipin Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Supplementary affidavit filed today on behalf of the applicant is taken on record.
2. Heard Sri Jai Kishan, learned counsel for the applicant and Sri Amarnath Vishwakarma, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 288 of 2023, under Sections 147, 148, 149, 452, 323, 326-A, 504, 506 IPC, Police Station- Sikandra Rao, District- Hathras, during pendency of the trial in the court below.
4. FIR of the present case was lodged against applicant and three others and according to the FIR, applicant and other accused persons threw Acid upon the daughter of the informant. It is further mentioned in the FIR that earlier daughter of the informant has lodged an FIR against them with regard to sexual assault.
5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and applicant did not participate in the instant crime and he was made accused in the present matter only because earlier victim of the case had lodged a FIR against him and others.
6. He further submitted that even victim in her statement recorded under Section 161 Cr.P.C. levelled general role against all the accused persons including applicant that all of them threw Acid on her leg but when her statement was recorded under Section 164 Cr.P.C. then she specified that co-accused Kabir threw Acid on her leg and did not make any allegation that applicant also threw Acid on her leg.
7. He further submitted that two accused persons Itisham and Hadeesh have already been released on bail by co-ordinate Bench of this Court and their bail orders have been annexed as Annexure

No. 11 to the affidavit. He further submitted that however, bail application principal accused Kabir has already been dismissed by co-ordinate Bench of this Court.

8. He further submitted that however, apart from the present case, applicant is having criminal history of about five cases but out of five case, four cases were of minor nature and one case is of Section 376 IPC and it is the case, which was lodged by the victim of the present case against the applicant and others and only due to this enmity, applicant was made accused in the present matter. He further submitted that criminal history of the applicant has been explained in paragraph no. 3 of the supplementary affidavit filed in support of the instant bail application. He further submitted that applicant is in jail in the present matter since 12.07.2023.

9. Per contra, learned AGA however, opposed the prayer for bail but could not dispute the fact that in the statement recorded under Section 164 Cr.P.C. victim attributed role of throwing Acid to co-accused Kabir and bail application of co-accused Itisham and Hadeesh have already been allowed by co-ordinate Bench of this Court and case of applicant is at par with then.

10. He further could not dispute the fact that however, applicant is having criminal history of five cases but except one case, all the four cases were of minor nature and remaining one case is although, of Section 376 IPC but in that case, FIR was lodged by the victim of the present case against the applicant and other accused persons.

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

12. However, victim in her statement recorded under Section 161 Cr.P.C. stated that applicant and other accused persons threw Acid on her leg but when her statement was recorded under Section 164 Cr.P.C. then she stated that co-accused Kabir threw Acid on her leg.

13. Further, after considering the statement of the victim recorded under Section 164 Cr.P.C. bail application of two accused Itisham and Hadeesh have been allowed by co-ordinate Bench of this Court and bail application of co-accused Kabir has been dismissed and therefore, in the light of the statement of the victim recorded under Section 164 Cr.P.C., case of applicant is at par with co-accused Hadeesh and Itisham, who have already been released on bail by this Court.

14. Further, however, applicant is having criminal history of five case but out of five cases, four cases were of minor nature and one case is although, of Section 376 IPC but from the record, it reflects that case under Section 376 IPC was lodged by the victim of the case and according to the applicant, due to that enmity, he was made accused in the present matter alongwith co-accused Kabir and others. Further, applicant is in jail in the present matter since 12.07.2023.

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

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

17. Let the applicant- **Kapil @ Kafeel** 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.

18. 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.

19. 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

KK Patel