

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53904 of 2023

Applicant :- Israr

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

Counsel for Applicant :- Mohd. Kalim, Mary Pancha (Sheeb Jose)

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain, J.

1. Sri Jhamman Ram, learned AGA apprised the Court that on 6.12.2023 notice has been served to the complainant. Despite service of notice, none appeared on behalf of the complainant.
2. Heard Sri Mohd. Kalim, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.
3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 615 of 2023, under Sections 354 IPC & 7/8 POCSO Act & 3(2)5A SC/ST Act, Police Station Tajganj, District Agra, during pendency of the trial in the court below.
4. Learned counsel for the applicant submitted that applicant has been summoned in a complaint case in the present matter and only allegation against him is of attempt to commit rape and admittedly there is no allegation of rape against the applicant.
5. He further submitted that from the complaint and statements of the witnesses recorded under sections 200 and 202 Cr.P.C. it reflects that both the sides were inimical to each other and even applicant has been challaned earlier under section 107, 116 and 151 Cr.P.C. due to the dispute arose between applicant and the complainant side.
6. He further submitted that applicant is having criminal history of two cases, out of which one case is of theft and one case is of NDPS Act but his criminal history has been explained in paragraph nos.-21 and 22 of the affidavit and in case of NDPS Act he is on bail and in case of theft he was challened through warrant-B and therefore, till date, he could not release on bail in that case.

7. He further submitted that applicant is in jail in the present matter since 20.7.2023.

8. Per contra, learned AGA opposed the prayer for bail but could not dispute the fact that applicant was summoned in a proceeding initiated through complaint case and only allegation against him is of attempt to commit rape.

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

10. However, from the perusal of the record, it reflects that apart from the present case, applicant is also having criminal history of two other cases and one case is of theft and another one is of NDPS Act and in case of NDPS Act he has been released on bail.

11. Further, from the record it also reflects that applicant was summoned on the basis of proceeding initiated through complaint case and only allegation against him is of attempt to commit rape and no allegation of rape has been levelled against him and from the record it also reflects that some dispute was pending between both the sides and due to the dispute applicant earlier also challaned under sections 107, 116 and 151 Cr.P.C.

12. Further, applicant is in jail in the present matter since 20.7.2023.

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

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

15. Let the applicant-**Israr**, 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.

16. 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.

17. 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 :- 15.12.2023

Ankita