

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53392 of 2023

Applicant :- Gulpham

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Naushad Ahmad Khan

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 Mohd. Naushad Ahmad Khan, learned counsel for the applicant and Sri Kunwar Tejendra Bahadur, learned AGA for the State.

3. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 479 of 2023, under Sections 376, 354Gha, 452, 323, 504, 506 IPC, Police Station Colonalganj, District Prayagraj during pendency of the trial.

4. FIR of the present case was lodged against applicant on 05.10.2023 and according to the FIR on 03.10.2023 at about 8.00 PM in the evening after entering in the room of the informant, applicant forcibly made physical relationship with her.

5. Learned counsel for the applicant submitted that entire allegation made against applicant is totally false and baseless and admittedly victim is major girl aged about 18 years and it is hard to believe that against her wishes applicant made physical relationship with her.

6. He further submits that even from her statement recorded under Section 161 Cr.P.C., it reflects that she was having friendship with the applicant and earlier also 2-3 times she made physical relationship with him.

7. He further submits that when the statement of victim under Section 164 Cr.P.C. was recorded then she changed the version of the FIR and stated that applicant forcibly committed rape upon her.

He further submits that actually applicant and victim both were having good friendship but due to third person dispute arose between both of them and thereafter FIR of the present case was lodged.

8. He further submits that however as per medical report of the victim dated 06.10.2023, it reflects that she also sustained abrasions on her body but no injury was found on her private part and she was medically examined after three days, therefore, it cannot be said that on the date of incident she sustained injuries and even on the basis of injuries of the victim, it cannot be said that these injuries were sustained by the victim at the time of alleged incident of rape.

9. He further submits that applicant is not having any criminal history and in the present matter he is in jail since 05.10.2023.

10. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

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

12. However, in the FIR as well as in both the statements of victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. there is allegation against applicant but in the FIR and in the statement recorded under Section 161 Cr.P.C. she stated that on 03.10.2023 applicant committed rape upon her but in the statement recorded under Section 164 Cr.P.C. she stated that earlier also in the month of September, 2023 applicant committed rape upon her and again on 03.10.2023 he committed rape, therefore, there are material contradiction in her both the statements.

13. Further, victim in her statement recorded under Section 161 Cr.P.C. on query made by Investigating Officer also stated that she knew the applicant for last three years and earlier also 2-3 times she made physical relationship with the applicant, therefore, in the light of her statement, the defence taken by the applicant cannot be completely ruled out.

14. Further, however from the medical report of the victim dated 06.10.2023, it reflects that she sustained abrasions on her body but no injury was found on her private part and duration of the alleged abrasions was not noted by the doctor, therefore, argument advanced by learned counsel for the applicant that it cannot be

ruled out that even after alleged incident victim might have sustained these abrasions cannot be completely brushed aside at this stage.

15. Further, applicant is not having any criminal history and in the present matter he is in jail since 05.10.2023.

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

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

18. Let the applicant - **Gulpham** 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.

19. 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.

20. 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