

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53261 of 2023

Applicant :- Sumit

Opposite Party :- State of U.P.

Counsel for Applicant :- Jahangir Haider, Vishal Kumar Sonkar

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Jahangir Haider, learned counsel for the applicant and Sri Pradeep Kumar, learned AGA for the State-respondent.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 884 of 2023, under Sections 376, 323, 506, 452 IPC, Police Station- Bistrakh, District- Gautambudh Nagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged against delivery boy and according to the FIR, on 27.10.2023 when informant was alone in her house, one delivery boy arrived at her house to deliver the items and after that he entered in her flat and made assault upon her and tried to commit rape.
4. Learned counsel for the applicant submitted that applicant was not named in the FIR but during investigation, when it was revealed that he was the person, who was attributed the work of delivery of items in the house of the informant then applicant was made accused in the present matter.
5. He further submitted that on the basis of false allegation, applicant was made accused in the present matter and there are material contradictions in the story narrated by the victim in the FIR as well as in her statements recorded during investigation. He further submitted that in the FIR there is no allegation of rape and only allegation was of attempt to commit rape but when statements of the victim were recorded during investigation then she started making allegation of rape against the applicant.
6. He further submitted that actually after delivering the items when applicant was going back then informant called him and on phone she insisted him to assist her in delivering a doggy and when he refused then she lodged the FIR of the present case.

7. He further submitted that applicant is not having any criminal history and he is in jail since 30.10.2023.

8. Per contra, learned AGA opposed the prayer for bail and submitted that applicant is a delivery boy and he misused his position and after delivering the items, he entered in the house of the informant and firstly outraged the modesty of the victim and thereafter committed rape upon her and there is no reason to disbelieve the statements of the victim at this stage. He further submitted that the ground of false implication taken by the applicant appears to be absurd and on the basis of such ground, prosecution story cannot be discarded.

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

10. From the record, it reflects that applicant is a delivery boy and as per the allegation, after making delivery of the items, he entered in the flat of the informant, who is aged about 19 years and committed rape upon her and in the process he also caused injury to her and even medical report of the victim suggests that she sustained injury.

11. However, in the FIR allegation is that applicant made assault and tried to commit rape with the victim but merely on the basis of the version of the FIR, at this stage, it cannot be said that no rape was committed, especially, considering the statements of the victim recorded during investigation, in which, she categorically stated that applicant committed rape upon her.

12. Therefore, considering the allegation made against the applicant and the fact that he was a delivery boy, I am not inclined to release the applicant on bail.

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

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 :- 12.12.2023

KK Patel