

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53595 of 2023

Applicant :- Meharban

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Kalim

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Mohd. Kalim, learned counsel for the applicant and Sri Shatruhan Yadav, learned AGA for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 129 of 2023, under Sections 376D, 380, 420, 406, 506 IPC, Police Station Gagalhedi, District Saharanpur during pendency of the trial.
3. FIR of the present case was lodged on 27.07.2023 against applicant and five others and according to the FIR in the month of November, 2022 applicant and other accused persons has taken Rs. 5 lakhs and other items from the house of the informant, who is major lady by playing fraud. It is further mentioned in the FIR that applicant and other accused persons duped total Rs.7,63,000/- from the informant and number of times they have committed gang rape upon her.
4. Learned counsel for the applicant submitted that entire story narrated by the victim i.e. informant of the case appears to be vague and no reliance can be placed on such version.
5. He further submits that however as per victim, who is major and married lady, in the month of November, 2022 after entering in her house applicant and other accused persons by playing fraud committed rape upon her and also taken money and jewelries but FIR of the present case was lodged in the month of July, 2023 i.e. after eight months and this inordinate delay in lodging the FIR itself suggests that applicant has falsely been implicated in the present matter.
6. He further submits that even arrest of two accused persons Shabir and Kamil have been stayed by this Court till submission of

report under Section 173(2) Cr.P.C. and order passed by this Court has been annexed as Annexure-6 to the affidavit.

7. He further submits that applicant is not having any criminal history and in the preset matter he is in jail since 25.09.2023.

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

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

10. However, in the FIR as well as in both the statements of the victim i.e. informant of the case recorded during investigation, there is allegation of gang rape and also allegation that applicant by playing fraud obtained huge amount of money and jewelries from the informant but FIR of the present case was lodged after more than eight months. Further story narrated by the victim i.e. informant of the case in the FIR and in her both the statements recorded during investigation appears to be vague and no reliance can be placed on such version at this stage.

11. Further, co-accused Shabir and Kamil when approached this Court for quashing of the FIR of the present case in criminal writ jurisdiction, then this Court stayed their arrest till submission of report under Section 173(2) Cr.P.C. and case of applicant is even at better footing than co-accused Shabir and Kamil.

12. Further, applicant is not having any criminal history and in the preset matter he is in jail since 25.09.2023.

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 - **Meharban** 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 :- 14.12.2023

AK Pandey