

Court No. - 66

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40844 of 2024

Applicant :- Ramesh Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashwani Kumar Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri Ashwani Kumar Pathak, learned counsel for the applicant and Sri Vijay 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. 414 of 2024, under Sections 366, 376, 506 IPC, Police Station- Kotwali Hata, District-Kushinagar, during pendency of the trial in the court below.
3. FIR of the present case was lodged against applicant on 25.05.2024 under Section 366 IPC and according to FIR, applicant, who is real *brother-in-law (jija)* of the victim, enticed her under the false promise to perform marriage with her.
4. Learned counsel for the applicant submitted that on the basis of false allegation, applicant has been made accused in the present matter. He further submitted that it is a case, in which unfortunately an illicit relationship was developed between *sister-in-law* and *brother-in-law* and when this fact came in the knowledge of the informant then he lodged the FIR of the present case. He further submitted that the fact that relationship was developed between applicant and his *sister-in-law* i.e. victim of the case is even evident from the statement of the victim recorded under Section 161 Cr.P.C., however, subsequently in her statement recorded under Section 164 Cr.P.C. she changed her version and made allegation of rape against the applicant. He further submitted that admittedly, victim is a major girl.
5. He further submitted that applicant is not having any criminal history and he is in jail in the present matter since 16.07.2024.
6. Per contra, learned AGA however, opposed the prayer for bail

but could not dispute the fact that victim is major and from the record, it could not be reflected that she was not the consenting party.

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

8. However, victim in her statement recorded under Section 164 Cr.P.C. made allegation of rape against the applicant but she is major and she in her statement recorded under Section 161 Cr.P.C., stated another story and stated that love affair was developed between applicant and her and thereafter they performed marriage and considering this fact, the argument advanced by learned counsel for the applicant that an illicit relationship was developed between applicant and victim, cannot be completely ruled out at this stage. However, relationship between *brother-in-law* and *sister-in-law (jija and sali)* is immoral but considering the fact that victim is major, the same does not attract provision of offence of rape.

9. Further, applicant is not having any criminal history and he is in jail in the present matter since 16.07.2024.

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

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

12. Let the applicant- **Ramesh Yadav** 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.

13. 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.

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 :- 14.11.2024

KK Patel