

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 75 of 2023

Applicant :- Aman Vishwakarma Alias Mukesh

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home), Govt. U.P. Lko. And 3 Others

Counsel for Applicant :- Ramakar Shukla

Counsel for Opposite Party :- G.A., Subodh Kumar Pandey

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed by the applicant is taken on record.

2. Heard Shri Ramakar Shukla, learned counsel for the accused/applicant, Shri Subodh Kumar Pandey, learned counsel appearing for opposite party no.2/complainant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Aman Vishwakarma Alias Mukesh** for grant of bail, in Case Crime No. 141/2022, under Sections 376, 506 IPC, Section 3/4 POCSO Act and Section 3(2) (V) SC/ST (P.A.) Act, Police Station Peeperpur, District Amethi, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report of this case was lodged by the father of the prosecutrix on 6.10.2022 at Police Station Peeperpur, District Amethi with the allegation that the applicant, who was talking to his daughter aged about 16 years had committed rape on her on 4.10.2022 at his house and has also enticed her away and left her at the outskirts of the village and whole incident was narrated to him by his daughter on 6.10.2022.

5. learned counsel for the applicant vehemently submits that the prosecutrix has been medically examined on 7.10.2022 and no abnormality or injury etc. has been found on her person, thus the allegations as levelled in the First Information report are not corroborated by any medical evidence.

6. It is further submitted that in her statements recorded under Sections 161 and 164 Cr.P.C. the prosecutrix / victim admitted

that she was regularly talking on her mobile phone with the applicant and on 4.10.2022 also she had talked to him for about an hour and at 11.00 P.M. he arrived at her house and committed sexual assault, while she was alone in the house.

7. It is vehemently submitted that infact the applicant and the victim were in a relationship and they were meeting frequently, however, the prosecutrix has appeared before the trial court as P.W.2 wherein though in her chief examination she supported the version of the prosecution but while in her cross examination she did not support the prosecution and had categorically stated that no incident as shown in the FIR had occurred and her uncle and aunt had persuaded her parents to lodge the FIR and she had also disowned her statements recorded under Sections 161 and 164 Cr.P.C. and has categorically stated that her statement under Section 161 was recorded while she was pressurized by the police personnel.

8. It is further submitted that since the star witness of this crime namely, the prosecutrix has turned hostile the chances of conviction of the applicant is remote. The applicant is in jail in this case since 07.10.2022 and he is not having any criminal history. There is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

10. Shri Subodh Kumar Pandey, learned counsel for the informant/ complainant opposes the prayer of bail of the applicant on the ground that the applicant is accused of committing heinous offence.

11. Having heard learned counsel for the parties and having perused the record, it is reflected from the record that the age of the prosecutrix as per academic radio-logical examination was about 17 years and as per her educational credential she was aged about 16 years and three months. Though in her statement recorded under Sections 161 and 164 Cr.P.C. the victim had supported the allegation of sexual assault, however, when she was examined as P.W.2 before the trial court, she remained intact, however, in her cross examination she did not support the prosecution and categorically stated that no incident as shown in the FIR and in her statements recorded under Sections 161 and 164 Cr.P.C. had occurred and also that the statement given to the Investigating Officer recorded under Section 161 Cr.P.C. was not given by her and the statement

under Section 164 Cr.P.C. before the Magistrate was given as she was pressurized by the Police personnel. The applicant is in jail in this case since 07.10.2022 and is not having any criminal antecedent. His presence may be secured before the trial court by placing adequate conditions.

12. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

13. Let the applicant- **Aman Vishwakarma Alias Mukesh** involved in the aforesaid case be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

14. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

15. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

16. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 26.10.2023

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