

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12101 of 2021

Applicant :- Mithilesh

Opposite Party :- State Of U.P. And 3 Ors.

Counsel for Applicant :- Bhagwati Prasad Nigam, Ajay Kumar

Tripathi, Shyam Mohan Upadhyay, Vijay Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

As per the report of the Chief Judicial Magistrate, Hardoi on date 22.05.2023, the opposite party No.2 has been sufficiently served, however, she is not represented by anyone.

Heard Shri Vijay Kumar, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant-**Mithilesh** for grant of bail, in Case Crime No.201/2021, under Sections 376, 315, 506, 120B I.P.C. & 3/4 POCSO Act, Police Station- Kasimpur, District- Hardoi, during trial.

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 has been lodged by the victim herself on 16.05.2021 alleging that co-villager Ms. Motu has introduced her to the applicant and in the winter season, he (applicant) had committed sexual assault on her multiple times by which she became pregnant. In the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., the prosecutrix had stated that about five months ago from recording her statement, she had gone to ease out where she met with a co-villager, Ms. Motu, who called the applicant and in connivance with the above said Ms. Motu, the applicant committed sexual assault on her by which she became pregnant and thereafter, some medicine was administered to her by Ms. Motu whereby the fetus was aborted.

While drawing the attention of this Court towards the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., it is vehemently submitted that case of the informant is straight that on the fateful day, she was subjected to rape by the applicant and thereafter, she became pregnant and ultimately, on some medicine given to her by co-accused Ms. Motu, the fetus was aborted and the post mortem of that fetus had also taken place and samples were preserved for D.N.A. Attention of this Court has been drawn to the copy of the D.N.A. report filed by

the State vide its supplementary counter affidavit dated 05.05.2023 at page No.3 wherein the biological mother has been ascertained as the victim while applicant could not be ascertained as biological father of the fetus and it is submitted that the whole story as cooked up by the informant is under the cloud of suspicion as in her statement recorded under Sections 161 and 164 Cr.P.C., she has narrated about the sexual assault only once, even in her statement recorded before the trial Court, she had stated about commission of sexual assault only once, thus, the story as narrated by the prosecutrix has been belied by the D.N.A. report.

It is also submitted that applicant is in jail in this case since 22.05.2021 and he is not having any criminal history. Only two witnesses have been presented so far before the trial Court by the prosecution and by the same pace, the trial is not going to conclude in near future. The applicant undertakes to cooperate in the trial and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and therefore, he is not entitled to be released on bail.

Having heard learned counsel for the parties and having perused the record, it is reflected that though, in the first information report, sexual assault is shown to have been committed multiple times, however, in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., she had categorically stated that she was sexually assaulted only once when she had gone to ease out and had met with co-villager Ms. Motu, who had called the applicant and thereafter, the sexual assault was committed by the instant applicant on prosecutrix. It is also the case of the prosecutrix that subsequently some medicine was given to him by Ms. Motu by which while she was going to hospital, the fetus was aborted. The post mortem of the fetus was performed and the samples were preserved for the purpose of D.N.A and requisite samples were also taken from the victim as well as from the applicant and the report of the D.N.A procedure has been placed on record by the State through supplementary counter affidavit wherein it is stated that applicant is not the biological father of the fetus and it is in this background, it is submitted with considerable force that the allegations as leveled by the victim in her statement recorded under Sections 161 and 164 Cr.P.C are not finding corroboration by the medical evidence. There cannot be any doubt that the D.N.A. profile report is so far

having greater evidential value if not conclusive proof, however, the appreciation of evidence is an area earmarked for the trial Court and the same would be performed by the trial Court without being guided by any observation of this Court independently. So far as the plea of bail of the applicant is concerned, in the considered opinion of this Court, the same may now safely be extended to him, more so, when he is not having any criminal antecedent and is in jail in this case for almost 3 years. The presence of the applicant could be secured before the trial court by placing adequate conditions.

Having regard to the overall facts and circumstances of the case and 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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

Let the accused/applicant- **Mithilesh** involved in above-mentioned case, be released on bail on his 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.

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

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

Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

Order Date :- 11.10.2023
Gurpreet Singh