

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1040 of 2023

Applicant :- Lavkush

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.

Counsel for Applicant :- Kaushal Kishore Tewari, Amrendra Singh Somvanshi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Lavkush** for grant of bail, in Case Crime No. 454 of 2022, under Sections 376, 452, 323, 504 and 506 I.P.C., Police Station Laharpur, District Sitapur, during trial.

3. 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 prosecutrix herself with the allegation that on 23.06.2022 when she was sleeping alone, as her husband had gone outside, the applicant entered into her house and sexually assaulted her and when the complaint of this act was made by the parents-in-law of the informant/victim to the family members of the applicant, the family members of the applicant had abused the parents-in-law of the informant and also assaulted them. He further submits that the F.I.R. of this case has been lodged by moving an application under Section 156(3) Cr.P.C. and, thus, the allegations narrated therein have been aggravated with the help of a legal professional.

4. It is also submitted that though, the allegation of rape has been levelled in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. but the same are not finding corroboration with the medical evidence, as no injury, etc. or any abnormality has been found in the medical examination report of the prosecutrix and the statement of the prosecutrix has also been recorded before the trial Court as P.W.-1, wherein she has become hostile and has not supported the version of the prosecution with regard to the commission of rape and has also disowned her statements recorded under Section 161 and 164 Cr.P.C..

5. It is vehemently submitted that since the prosecutrix has become hostile and has not supported the case of the prosecution, it would be impossible for the prosecution to secure his conviction before the trial Court. Applicant is languishing in jail in this case since 21.08.2022 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

6. Learned A.G.A., however, 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.

7. Perusal of the record would reveal that the age of the prosecutrix at the date and time of the incident was about 25 years. Though, in her statements recorded under Section 161 and 164 Cr.P.C., she has supported the allegation of rape but there is no abnormality or any injury found on her person in her medical examination. In her statement recorded before the trial Court as P.W.-1, she became hostile and did not support the allegations of rape and it is in this background, it is submitted that the conviction of the prosecution would not be possible before the trial Court. Applicant is languishing in jail in this case since 21.08.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

8. 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**.

9. Let the accused/applicant- **Lavkush** 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.

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

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

12. 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 on the merits of the case.

Order Date :- 30.11.2023

Praveen