

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1602 of 2023

Applicant :- Rizwan

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

Counsel for Applicant :- Devendra Kumar Srivastava

Counsel for Opposite Party :- G.A.,Ajeet Singh,Santosh Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Though the name of Shri Ajeet Singh and Shri Santosh Singh, learned counsels for the informant/victim is printed in the cause list, but they are not present nor any request has been made on their behalf to adjourn the case.

2. Heard Shri Devendra Kumar Srivastava, learned counsel for the accused/applicant 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- **Rizwan** for grant of bail, in Case Crime No. 443 of 2022, under Sections 376, 506 IPC, Police Station Thakurganj, District Lucknow, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.

5. It is further submitted that the FIR of this case has been lodged by the victim herself on 26.8.2022 alleging therein that on the request of the brother of the accused who is married to her elder sister, she had gone to her house and on relevant date, she was sleeping in the bedroom of her sister, when she was overpowered by the applicant and sexual assault was also committed by him on her and some nude photographs were also clicked and it was intimidated that if she would not toe the terms of the applicant, he will make the photographs viral.

6. Highlighting the above facts, it is vehemently submitted that though the prosecutrix/victim has supported the allegations of the FIR in her statements recorded under Sections 161 & 164 CrPC, but the real story is to the tune that the elder sister of the

prosecutrix/victim is married to the elder brother of the applicant and the family members of the prosecutrix/victim wanted to solemnize the marriage of the prosecutrix/victim with the applicant, to which the applicant was not ready and it is on this score, the false FIR was lodged.

7. While drawing attention of this Court towards some photographs which have been placed from page no. 23 onwards, it is submitted that the applicant and the prosecutrix/victim were having cordial relations and they were frequently talking to each other. However, no such incident, as stated by the prosecutrix/victim, has ever happened.

8. The attention of this Court was also drawn towards the medical report of the prosecutrix/victim, which shows that the hymen of the prosecutrix/victim was found intact belying the whole prosecution story and there is no other medical evidence of any kind which may corroborate the statement of the prosecutrix/victim. The age of the prosecutrix/victim is about 20 years, as assessed through ossification test.

9. It is further submitted that the applicant is in jail in this case since 01.09.2022 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed and 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.

10. Learned A.G.A., on the other hand submits that having manner on which the offence has been committed the applicant is not entitled for any relief.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix/victim appears to be 20 years. On the basis of material which has been collected by the investigating officer, it appears to be an admitted fact that the elder sister of the prosecutrix/victim is married to the elder brother of the applicant and at the relevant point of time, the prosecutrix/victim was residing in the home of her elder sister due to some exigency. The commission of forceful sexual assault has been attributed to the applicant. The medical report of the prosecutrix/victim sufficiently demonstrates that her hymen was found intact. No other abnormality or any kind of injury has been noticed on her person. The sexual assault is shown to have been committed on 23.8.2022. The FIR could only be lodged on 26.8.2022 on the basis of a written application moved by the prosecutrix/victim of the same date. Various submissions have been made by learned counsel for the

applicant in order to show that the case of the prosecution is false and without any reliable/clinching evidence. The applicant is in jail in this case since 01.09.2022 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any 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- **Rizwan** 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 :- 28.11.2023

Shravan