

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1697 of 2023

Applicant :- Navendra Kumar @ Bablu Halwai

Opposite Party :- State Of U.P. Thru. Secy. Home Lko. And Another

Counsel for Applicant :- Rakesh Kumar, Anuj Pratap Singh, Atul Kumar Pandey, Kamla Shanker Awasthi, Mithila Shanker Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Sri Ran Vijay Singh, learned A.G.A. for the State has filed supplementary counter affidavit, which is taken on record.
2. Heard learned counsel for the applicant as well as learned A.G.A for the State and perused the record.
3. This bail application has been filed seeking release of accused-applicant- Navendra Kumar @ Bablu Halwai, on bail, in Case Crime No.171 of 2022, under Sections 328, 376-D, 506 IPC, Police Station- Para, District- Lucknow.
4. It has been submitted by learned counsel for the applicant that the prosecutrix herself lodged F.I.R. in which she has mentioned the date of incident of rape, i.e., 04.04.2022. It is further submitted that she has levelled false allegation that the applicant and co-accused committed rape upon her in intoxicated state. It is also submitted that in the statement of the prosecutrix recorded under section 164 CrPC, the date of alleged incident of rape is mentioned as 04.03.2022, whereas in the FIR, the date of alleged incident is mentioned as 04.04.2022. Learned counsel for the applicant has submitted that the medical report of the victim indicates that the date of incident is mentioned as 20-25 days before and there is contradiction in the version of FIR, the statement of the prosecutrix recorded under section 164 CrPC and the medical report of the prosecutrix, therefore, the applicant is entitled for bail.
5. Learned counsel for the applicant has further submitted that the applicant has been falsely been implicated in the present case as the applicant had advanced Rs.2000/- to the prosecutrix and upon asking to return the amount, she has implicated him

on false allegation. He has submitted that the medical report is not supporting the prosecution case. He further submitted that while she was medically examined, she had stated before the doctor that application for lodging the FIR at the police station was given by her mother.

6. On the other hand, learned A.G.A. for the State has vehemently opposed the bail application and submitted that from the FIR as well as statement of the prosecutrix recorded under section 164 CrPC, it is evident that the allegation of rape is levelled by the prosecutrix and she has deposed before the Court that she is a widow and she was living along with her mother and the applicant and co-accused hired her to do work on the date of alleged incident and later on she was made to consume cold-drink which was adulterated and when she was unconscious, both the applicant and the co-accused committed rape upon her. Learned A.G.A. stated that single statement of the prosecutrix is sufficient for conviction. He further submitted that the prosecutrix was married, therefore, certainly the internal injury could not have been found but it does not mean that the statement of the prosecutrix can be over-looked.

7. Learned A.G.A. for the State has further invited attention of the Court to the medical report in which the prosecutrix had also stated before the doctor the rape upon her was committed by the applicant and the co-accused. He has submitted that it is a case of gang-rape and the applicant is not entitled for grant of bail.

8. Considering the over all facts and circumstances of the case, the argument that the statement of the prosecutrix recorded under section 164 CrPC as well as version of FIR indicate that the applicant had committed rape upon the prosecutrix, the argument that there is no reason to disbelieve the prosecution case, I do not find it a fit case for grant of bail.

9. In view of the aforesaid observations, the bail application is **dismissed** accordingly.

10. The trial court is directed to conclude the trial within six months, without being influenced by the observation made by this Court.

Order Date :- 5.12.2023

Manoj K.