

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2515 of 2023

Applicant :- Jalaj Pathak

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Civil Sectt. Lko. And 3 Others

Counsel for Applicant :- Rahul Mishra, Mukesh Kumar Mishra, Rajan Mishra, Umesh Chandra Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per communication dated 14.03.2023 sent by Chief Judicial Magistrate, Gonda which is on record, complainant/victim appears to have been served personally/sufficiently, however, she is not represented.
2. Heard 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- **Jalaj Pathak** for grant of bail in Case Crime No.0385 of 2022, under Sections 354, 376(3), 323, 504 and 506 IPC read with Section 3/4 POCSO Act and Sections 3(1)(r)(s) (w) and 3(2)(5) SC/ST Act lodged at Police Station Chhapia, District Gonda, during trial.
4. Learned counsel for the accused-applicant, while pressing the bail application, submits that the applicant has been falsely implicated in this case and, he has not committed any offence, as claimed by the prosecution.
5. It is further submitted by the learned counsel for the applicant that in the FIR which has been lodged by the prosecutrix/victim herself by moving a written application wherein only the allegation of molestation and outraging her modesty has been levelled against the applicant and there was no whisper pertaining to the commission of rape and in her statement recorded under Section 161 CrPC also, she has not alleged commission of rape, however, in her statement recorded under Section 164 CrPC, she, for the very first time, has imputed commission of rape to the applicant.
6. Highlighting the above, it is vehemently submitted that the medical report of the prosecutrix is clean and no opinion has

been given about the sexual assault and the prosecutrix by moving a written application has lodged the FIR wherein also there is no allegation of commission of rape levelled against the applicant and, for the very first time in the statement of the prosecutrix recorded under Section 164 CrPC there is a manifest improvement and the same could not be believed. It is vehemently submitted that the incident with regard to molestation has been given the colour of rape/sexual assault. It is further submitted that the applicant is languishing in jail in this case since 26.12.2022. The statement of the victim is being recorded before the trial Court and the trial is not going to be concluded in near future. The age of the prosecutrix though was about 15 and a half years at the date and time of the alleged incident, but the same is not relevant in this case as the offence of only molestation is emerging. The applicant is not having any previous 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.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the offence has been committed with the girl of a very tender age and, therefore, having regard to gravity of offence the applicant is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix appears to be about 15 and a half years at the date and time of the alleged incident. The FIR of this case has been lodged by the victim/prosecutrix herself by moving a written application and in that written application there is no mention of commission of rape and allegations are only with regard to molestation. In the statement of the prosecutrix recorded under Section 161 CrPC also there is no whisper about commission of rape. For the very first time the commission of rape has been highlighted by the prosecutrix in her statement recorded under Section 164 CrPC, which as per submission of learned counsel for the applicant is a manifest improvement. It is highlighted before this Court that the medical report of the prosecutrix is clean. The prosecutrix was medically examined on 19.12.2022, after three days of the incident, and the Doctor, who has examined the prosecutrix, in her statement has also not stated anything with regard to the commission of rape. The applicant is languishing in jail in this case since 26.12.2022 without any previous criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the accused/applicant- **Jalaj Pathak** 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.

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

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

13. 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 2.11.2023

MVS/-