

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2670 of 2023

Applicant :- Vivek Kumar Kanaujiya

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

Counsel for Applicant :- Mohit Tiwari,Akhilesh Kumar Pandey,Vyas Narayan Shukla

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- **Vivek Kumar Kanaujiya** for grant of bail, in Case Crime No. 02 of 2023, under Sections 376, 452, 354 and 506 I.P.C., Police Station Sangrampur, District Amethi, 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 father-in-law of the prosecutrix on 06.01.2023 with regard to the incident occurred on 18.12.2022 at about 11:00 pm. the applicant had entered into the room of the prosecutrix and molested her. It is next submitted that the F.I.R. of this case has been lodged with inordinate delay and the explanation which has been provided to justify the delay in lodging the F.I.R. is not trustworthy, as it is stated in the F.I.R. that F.I.R. could only be lodged when the husband of the prosecutrix had arrived from Mumbai, while the F.I.R. has been lodged by the father-in-law, who was admittedly residing with the prosecutrix and the F.I.R. could easily have been lodged much earlier by him.
4. It is further submitted that in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C., it is stated that in the night at about 11:00 pm. the applicant had entered into her room through a 'ventilator' and after commission of rape fled away from the scene and he was also seen by her father-in-law.
5. While referring to the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., it is submitted that if both these statements would be read jointly, it would emerge that

prosecutrix was a consenting party, as she was in a position to raise an alarm but chooses to remain silent while the applicant was not having any weapon of assault with him and since at the relevant point of time she was seen with the applicant by her father-in-law, a false case of sexual assault has been cooked up.

6. It is also submitted that no abnormality or any injury, etc. have been found in the medical examination report of the prosecutrix. Applicant is languishing in jail in this case since 07.01.2023 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.

7. 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.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix at the relevant point of time was major. She was a married lady and her husband was working in Mumbai and was not present in the village. The role, which has been assigned to the instant applicant is of entering into the room of the prosecutrix through a 'ventilator' and after commission of rape it is stated that he had fled away. Admittedly, the applicant was not possessing any weapon of assault with him at the time of the alleged incident. Various instances narrated/highlighted by learned counsel for the applicant that in the statements of victim recorded under Section 161 and 164 Cr.P.C. in order to show that prosecutrix was a consenting party. Attention of this Court has also been drawn on an application moved by the prosecutrix before the A.C.J.M., Court No.19, Sultanpur under Section 156(3) Cr.P.C. on 04.01.2023, wherein it is alleged that the family members of the prosecutrix are pressurizing the applicant to solemnize marriage with her while she is 25 years of age and the applicant is only of 21 years and when he refused to marry, the instant F.I.R. has been lodged.

9. Be that as it may, keeping in view the fact that the applicant is languishing in jail in this case since 07.01.2023 without any criminal antecedents and various submissions, which have been highlighted by learned counsel for the applicant emerging in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., in the considered opinion of this Court, the facility of bail may safely be extended to the applicant. The bail application is thus **allowed**.

10. Let the accused/applicant- **Vivek Kumar Kanaujiya**

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.

Order Date :- 30.11.2023

Praveen