

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2892 of 2023

Applicant :- Acchan

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

Counsel for Applicant :- Praveen Chandra, Ajeet Kumar Singh, Ambica Tripathi, Ravindra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. It is informed by learned A.G.A. that opposite party no.2 in this case has been personally served at their end and the information obtained in this regard from the Police Station Pali, District Hardoi of date 27.03.2023 has been enclosed with the counter affidavit as C.A.No.-1. Thus it appears that the opposite party no.2 has been sufficiently served, however, he is not represented.

2. Heard Shri Ajeet Kumar Singh, 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- **Acchan** for grant of bail, in Case Crime No.440 of 2022, under Sections 323, 504, 506, 452, 376 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Pali, District Hardoi, 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 that F.I.R. of this case has been lodged by the father of the prosecutrix with the allegations that on the pretext of marrying, his minor daughter aged about 12 years has been exploited by the applicant. Statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C., wherein she admitted that she was talking to the applicant for the last one year and he was usually coming to meet her when he find her alone and also used to commit sexual assault, but now he is refusing to marry her.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that in her statement recorded under Section 164 Cr.P.C., the prosecutrix apart from stating that she was in love with the applicant, has also stated that their relationship was not known to her parents and her parents had caught them about 8-9 days prior to the lodging of the F.I.R. and as her father had gone to the house of the applicant and thereafter his family members had came to her house and also intimidated her family members apart from outraging her modesty.

7. It is further submitted that the prosecutrix has appeared before the trial court as P.W.-1 and she has not levelled any kind of allegation against the applicant and had categorically stated that she was never sexually abused by the applicant. She has also disowned her statement recorded under Section 161 Cr.P.C. and with regard to her statement recorded under Section 164 Cr.P.C., she stated that this statement was given by her under the pressure applied by the police personnel. It is also submitted that allegations as levelled by the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. are not corroborated by the medical evidence as no injury of any kind or any abnormality has been found therein.

8. It is next submitted that since the prosecutrix has not supported the version of the prosecution in her evidence recorded before the trial court, her age has become insignificant and the applicant is not likely to be convicted as the sole witness of the crime has turned hostile. Applicant is in jail in this case since 05.12.2022 and he is not having any criminal history and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

9. 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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that though in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., she had alleged sexual intercourse by the applicant against her wish but she has admitted to be in a relationship with him. However, in her statement recorded before the trial court, she has not imputed any allegation against the applicant and have also disowned her statement recorded under Sections 161 and

164 Cr.P.C. and it is in this background, it is submitted by learned counsel for the applicant that since the sole witness of the crime has become hostile, conviction of the applicant would be a remote possibility. Applicant is in jail in this case since 05.12.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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**.

12. Let the accused/applicant- **Acchan** 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.

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

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

15. 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 of this Court on the merits of the case.

Order Date :- 11.10.2023

Anupam S/-