

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3656 of 2023

Applicant :- Anshu Yadav

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

Counsel for Applicant :- Puttu Lal Misra, Sanat Singh, Sudhir Kumar, Suhail Kashif

Counsel for Opposite Party :- G.A., Sarjoo Ram

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the accused-applicant, learned A.G.A. for the State, as well as Mr. Sarjoo Ram, learned counsel for the complainant/informant, and perused the record.
2. This bail application has been moved by the accused / applicant -**Anshu Yadav** for grant of bail in Case Crime No.01176 of 2022, under Sections 452, 376 and 354B IPC read with Section 3/4 POCSO Act and Sections 3(2)(V) SC/ST Act, 1989 lodged at Police Station Kotwali, District Barabanki, during trial.
3. 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.
4. It is further submitted that the FIR of the instant case has been lodged by the father of the victim alleging therein that on 29.10.2022 at about 01 a.m. in the morning the applicant entered into his house and switched-off electricity and thereafter started molesting his daughter aged about 17 years and with the help of his family members the applicant was apprehended.
5. Highlighting the above facts, it is vehemently submitted that the informant has claimed himself to be an eye-witness of the incident and allegations in the FIR at the most may attract the penal provisions with regard to molestation and there was no whisper for commission of rape. Similarly, in the statement of the prosecutrix recorded under Section 161 CrPC also, the allegations have been levelled with regard to the molestation, however, after many days of recording of the statement of the prosecutrix under Section 161 CrPC, her statement under

Section 164 CrPC was recorded and under the influence of her family members she for the very first time has levelled allegation of sexual assault. It is further vehemently submitted that all the family members of the prosecutrix were present in the house and, she is stated to be sleeping with her three sisters and, therefore, by any stretch of imagination, the rape could not be committed in this factual matrix. It is also submitted that the medical report of the prosecutrix is also clean and no injury etc. has been found on her person. She, as per educational credentials, was 17 years and 02 months old at the date and time of the alleged incident. Her radiological age has been assessed as 18 years. It is also submitted that the applicant was in relationship with the prosecutrix and this was not being digested by her family members and whole story has been cooked in the background of the relationship of the applicant with the prosecutrix.

6. It is next submitted that the applicant is languishing in jail in this case since 29.10.2022 and he is not having any previous criminal history. Charge sheet in this case has already been filed 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 a heinous offence and, therefore, he is not entitled to be released on bail.

8. Perusal of record, in the background of above submissions, would reveal that the age of the prosecutrix is about 17 years and 02 months as per educational credentials while through ossification test her age has been assessed as 18 years at the date and time of the alleged incident. The FIR was lodged amongst other under Section 354 IPC and the allegations were levelled pertaining to molestation. Similar was the condition of the statement of the prosecutrix recorded under Section 161 CrPC, however, for the very first time in the statement of the prosecutrix recorded under Section 164 CrPC the allegation of rape has been alleged. The defence of the applicant is that he was in a relationship with the prosecutrix and when this was known to her family members, he was assaulted and having regard to the grievous injuries sustained by the applicant, the allegation of rape has been levelled so that the applicant may not prosecute the informant and his family members with regard to assault given to him. The allegations and counter allegations levelled against each other by the parties may be better appreciated during the course of trial. Having regard to the period of incarceration as well as the evidence available on

record against the applicant and also keeping in view all the facts and circumstances of the case under which the offence is shown to have been committed and the prosecutrix is shown to be sleeping with her three sisters, a case for bail is made out. The applicant has been languishing in jail in this case since 29.10.2022 without any previous criminal antecedents. Charge sheet in this case has also been filed 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- **Anshu Yadav**, 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 :- 6.11.2023

MVS/-