

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5501 of 2023

Applicant :- Sujeet @ Sujeet Kumar

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

Counsel for Applicant :- Atul Benjamin Solomon, Kapil Gupta, Tilotma Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant- **Sujeet @ Sujeet Kumar** for grant of bail, in Case Crime No.177 of 2022, under Sections 352, 504, 376, 323 506 I.P.C., Police Station- Dubagga, District- Lucknow South, during trial.

Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The F.I.R. of the case has been lodged by the father of the prosecutrix on 23.9.2022 at Police Station- Dubagga, District- Lucknow South with the allegation that on 22.9.2022 when the prosecutrix was returning to home from her school by her bicycle the applicant had collided with her bicycle with his motorcycle whereby she sustained injuries and thereafter some associates of the applicant arrived at the spot and intimidated the informant.

Highlighting the above factual matrix, it is vehemently submitted on behalf of the applicant that in the first information report, which has been lodged by the father of the prosecutrix, there is no whisper about commission of sexual assault and the incident was confine to colliding of the motorcycle with the bicycle of the prosecutrix. However, the prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. has developed a case that after colliding his motorcycle of with her bicycle she was taken somewhere where sexual assault was committed by the applicant with her.

While drawing the attention of this Court towards the statement of the prosecutrix recorded under Section 164 Cr.P.C. it is submitted that if this statement is read as a whole it will emerge

that the prosecutrix was a consenting party, as she had gone with the applicant on his motorcycle and admittedly did not raise any alarm or resist.

While drawing the attention of this Court towards the paragraph no. 8 of the bail application it is submitted that the applicant and the prosecutrix were having a long standing relationship and it is on account of the fact that when their relationship was known to the father of the prosecutrix the F.I.R. has been lodged. It is also submitted that since the prosecutrix was a consenting party no offence would attract against the applicant. Moreover, the three injuries of minor nature which has been highlighted in the medical examination report of the prosecutrix have admittedly been sustained at the time of collusion of the motorcycle of the applicant with the bicycle of the prosecutrix, which has also been admitted by the informant in the first information report and apart from three minor injuries no injuries on the vital part or private part of the prosecutrix has been noticed and, therefore, there is only the statement of the prosecutrix in support of allegation of rape, which could not be termed trustworthy and she appears to be a consenting party and was admittedly aged about more than 19 years at the date and time of the incident.

It is next submitted that applicant is in jail in this case since 28.9.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted 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.

Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the prosecutrix during the course of the collusion has also sustained injuries and thereafter she was taken by the applicant and sexual assault has been committed. Thus, the applicant is not entitled to be released on bail.

Having heard learned counsel for the parties and having perused the record, it reveals that the age of the prosecutrix as stated by her in her statement recorded under Sections 161 and 164 Cr.P.C. is 17 years. The date of birth of the prosecutrix is stated in paragraph no. 14 of the counter affidavit as 17.5.2003 on the basis of certificate issued by the principal of the college. Thus, at the date and time of the alleged incident the prosecutrix appears to be major. The first informant in the F.I.R. has stated that due to the impact of the collusion of the motorcycle of the applicant with the bicycle of the victim she had sustained injuries. Thus, prima facie, it is also reflected that minor injuries sustained by the prosecutrix were sustained during the course of collusion of her bicycle with the motorcycle of the applicant.

Much emphasis has been given by the learned counsel for the applicant of the conduct of the prosecutrix in accompanying the applicant on his motorcycle to the place where allegedly the sexual assault had taken place and also not raising any alarm or showing any resistance in order to show that the prosecutrix was a consenting party, however, this fact would only be adjudicated after providing an opportunity to the parties to lead evidence but having regard to all the facts and circumstances of the case and also keeping an eye on the statement of prosecutrix recorded under Section 164 Cr.P.C. and the period of detention of the applicant already undergone, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

Let the accused/applicant- **Sujeet @ Sujeet Kumar** 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.

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

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

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 :- 28.10.2023
Anuj Singh