

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4310 of 2022

Applicant :- Mohd Saud Alias Altmas S/O Irfan Ahmad

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

Counsel for Applicant :- Shams Tabrez, Anand Kanaujia, Praveen Kumar Yadav, Raghvendra Pandey, Sushil Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State along with its counter affidavit has enclosed a communication sent by the concerned Police Station with regard to the service on opposite party no.2/ complainant. Perusal of the same reveals that opposite party no.2 has been sufficiently served, however he is not represented.

2. Heard Shri Anand Kanaujia 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- **Mohd Saud @ Altmas** for grant of bail, in Case Crime No. 226/2021, under Sections 363, 366, 376 IPC and 3/4 POCSO Act, Police Station Aashiyana, District Lucknow, during trial.

4. 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 brother of the victim on 3.6.2021 alleging therein that his sister aged about 14 years had gone to purchase some grocery items on 21.5.2021 at 4.00 P.M. and did not return thereafter. On being recovered, the statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C., wherein she stated to be in love with the applicant and also that for the last many months she was talking to him on mobile phone and on relevant day she had gone to purchase some grocery items and had accompanied him to Nilmatha, Hariharpur, where they resided in a rented accommodation and sexual relations were also established between them.

5. Highlighting above facts, it is vehemently submitted that the

prosecutrix has not levelled any allegation against the applicant and she also refused to undergo any medical examination and thus the charge sheet appears to have been filed against the applicant on the ground that the prosecutrix was minor.

6. It is vehemently submitted that the statement of the prosecutrix as well as the informant has been recorded before the trial court and the informant as well as the prosecutrix have not identified the applicant as the same person who had committed sexual assault on the prosecutrix. The prosecutrix in her statement had categorically stated that the accused person who is standing in the Court (applicant) did not do any wrong with her and she had seen the applicant/ accused in the Court on 7.7.2023, for the first time and that she was talking to Saud @ Altmas on mobile phone and no sexual relations were established between them.

7. It is vehemently submitted that when the prosecutrix has chosen not to support the version of the prosecution in the trial the chances of conviction of the applicant before the court below are remote. The applicant is in jail in this case since 25.10.2021 and he is not having any criminal antecedent. Charge sheet in this case already been submitted and there is not apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand opposes the prayer of bail of the applicant on the ground that sexual assault has been committed with a girl who is very tender age, therefore he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has not levelled any allegation against the applicant. In her statement recorded before the trial court as P.W. 2 she did not recognize/ identify the applicant who was present throughout the recording of the statement of the prosecutrix in the Court. The prosecutrix has also denied that any sexual relations were established with the person to whom she was talking on mobile phone and categorically denied that any wrong has been done with her by the applicant. The applicant is in jail in this case since 25.10.2021 and he is not having any criminal antecedent. His presence may be secured before the trial court by placing adequate conditions.

10. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

11. Let the applicant- **Mohd. Saud @ Altmas** involved in the aforesaid 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.

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

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

14. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 3.11.2023

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