

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4298 of 2023

Applicant :- Himanshu

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

Counsel for Applicant :- Rajiv Raman Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per communication sent by the Chief Judicial Magistrate, Sitapur, opposite party no.2 has been served, however, he is not represented.

2. Heard Shri Rajiv Raman Srivastava, 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- **Himanshu** for grant of bail, in Case Crime No.282 of 2022, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the P.O.C.S.O. Act, Police Station Hargaon, District Sitapur, 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 victim on 28.05.2022 at Police Station Hargaon, District Sitapur alleging that his daughter aged about 16 years was enticed away by the applicant for the purpose of marriage and after 3-4 days of the incident she had returned back, however, he (informant) did not lodge any F.I.R. in order to avoid humiliation, but now he intends to prosecute the applicant in order to get justice. The statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C., wherein she stated that she was forcefully taken by the applicant on a motorcycle in front of her younger brothers and after taking her to his house, he committed sexual assault on her and thereafter left her at the outskirts of the village.

6. Highlighting the above facts, it is vehemently submitted on

behalf of the applicant that the contents of the F.I.R. as alleged by the informant could not be believed as admittedly the prosecutrix had returned after 3-4 days of the incident, which had allegedly occurred on 24.04.2022 and F.I.R. has been lodged with a delay of almost 28 days and the explanation, which has been given by the informant for such delay, could not be deemed as justified.

7. It is further submitted that the prosecutrix refused to undergo any medical examination. Thus in support of the allegation of rape, there is only untruthful statements of the victim. It is also submitted that the story as narrated by the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. is highly improbable and could not be believed as she stated to have abducted on motorcycle of the applicant in front of her younger brothers and there is no mention that she either resisted or raised any alarm, which prima facie, reflects that she may be a consenting party.

8. It is also submitted that the date of birth of the prosecutrix as per educational credentials is 26.11.2005 by which she comes about 16 and half years. Her radiological age has also been determined as 16 years and having regard to two years variable either side applicable to the age determined through ossification test the prosecutrix may be major at the time of incident and as she appears to be a consenting party, no offence has been committed by the applicant.

9. It is next submitted that applicant is in jail in this case since 09.11.2022 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, it is evident in the background of the submissions made by learned counsel for the parties that it is stated by the informant in the F.I.R. that the victim has been enticed away by the applicant, which prima facie reflects that she was enticed, however, in her statement recorded under Sections 161 and 164 Cr.P.C. the prosecutrix has stated to have abducted by the applicant by using force on his motorcycle.

Various submissions have been raised by learned counsel for the applicant in order to show that the manner in which the prosecutrix had accompanied the applicant may not amount to abduction and since she has also not undergone any medical examination, the factum of sexual assault or rape is in a realm of doubt. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 09.11.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Himanshu** 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.

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

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

16. 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 :- 3.11.2023

Anupam S/-