

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4592 of 2023

Applicant :- Anil Nishad @ Mangu

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

Counsel for Applicant :- Naveen Kumar Pandey

Counsel for Opposite Party :- G.A.,Lalu Prasad Bhatt

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Naveen Kumar Pandey, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Lalu Prasad Bhatt, learned counsel for the opposite party no.2/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Anil Nishad @ Mangu** for grant of bail, in Case Crime No.151 of 2022, under Sections 363, 366, 376D, A, 323, 344, 506 I.P.C. and 5G/6 of the P.O.C.S.O. Act, Police Station Nawabganj, District Gonda, 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 in the F.I.R., which has been lodged by the father of the victim, wherein it is alleged that one Manna Nishad has enticed away his daughter aged about 13 years along with the help of three unknown persons, however, the applicant was not named in the F.I.R. and his name has surfaced in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. while in the statement recorded under Section 161 Cr.P.C. only allegation of abduction has been levelled against the applicant while in her statement recorded under Section 164 Cr.P.C., allegations of abduction as well as of committing sexual assault has been levelled. However, in the medical examination report of the prosecutrix, no abnormality or injury of any kind has been noticed.

5. It is vehemently submitted on behalf of the applicant that the prosecutrix has been testified before the trial court as P.W.-2, wherein she has categorically stated that she was enticed away by co-accused Manna Nishad and was taken to Kanpur, from

where she was recovered and they were living there as husband and wife. In her cross examination, she has specifically stated that the applicant has not committed any sexual assault on her nor he had enticed her away and she had given statement before the magistrate at the instance of police personnel and in fact the applicant has not committed any incident with her.

6. Highlighting the above facts, it is vehemently submitted that since the prosecutrix has not uttered anything against the applicant before the trial court, conviction of the applicant is a remote possibility. Though age of the prosecutrix at the relevant time was assessed as 13 years and 3 months on the basis of her educational credentials, but the same is insignificant as no imputation has been made by the prosecutrix before the trial court against the applicant.

7. It is next submitted that applicant is in jail in this case since 04.07.2022 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.

8. 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.

9. Shri Lalu Prasad Bhatt, learned counsel for the opposite party no.2/complainant vehemently opposes the prayer of bail of the applicant on the ground that the prosecutrix in her statement recorded under Section 164 Cr.P.C. has categorically imputed allegation of sexual assault to the applicant also and keeping in view the tender age of the prosecutrix, the applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that though the prosecutrix was of tender age at the date and time of the alleged incident and has also supported the allegation of abduction and sexual assault in her statement recorded under Section 164 Cr.P.C., so far as the applicant is concerned, but in her examination before the trial court, she has not imputed any kind of allegation against the applicant and given a clean chit. It is in this background, it is submitted by learned counsel for the applicant that since the prosecutrix has not imputed any allegation against the applicant, conviction of the applicant would be a remote possibility. Charge-sheet in this case has already been filed.

Applicant is in jail in this case since 04.07.2022 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- **Anil Nishad @ Mangu** 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 :- 17.10.2023

Anupam S/-