

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5186 of 2023

Applicant :- Avaneesh

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

Counsel for Applicant :- Neeraj Sahu,Manjusha Kapil,Vivek Shukla

Counsel for Opposite Party :- G.A.,Ajeet Kumar Singh,Farhan Alam Osmany

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Ms. Manjusha Kapil, learned counsel for the accused-applicant, A.G.A. for the State, as well as Mr. Ajeet Kumar Singh, learned counsel for the informant/complainant, and perused the record.

Supplementary affidavit, filed on behalf of the applicant, is taken on record.

2. This bail application has been moved by the accused/applicant- **Avaneesh** for grant of bail in Case Crime No.0521 of 2022, under Section 376 IPC read with Section 5m/6 POCSO Act lodged at Police Station Mallawan, District Hardoi, 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 on 05.12.2022 with regard to an incident which allegedly occurred on 02.10.2022 alleging therein that on 02.10.2022 the prosecutrix, who is the daughter of the informant/complainant, had gone to graze the pet animals where she was overpowered by the applicant and sexual assault was committed on her and thereafter the incident was reported to the police, but the police did not register the FIR and, on the matter being brought in the knowledge of the higher officers of the police, the FIR could be lodged. Age of the prosecutrix is shown as 11 years. The prosecutrix in her statements recorded under sections 161 and 164 CrPC had substantiated the

allegations of rape committed by the applicant.

5. While drawing attention of this Court towards the FIR lodged by brother of the applicant, namely, Ram Vilas on 05.11.2021 bearing case crime no.0575 of 2021, copy of which is placed as Annexure-5 to the bail application amongst others against one Khushi Ram also (who is father of the victim of the present case), learned counsel appearing for the applicant vehemently submits that the instant case is nothing but a counter-blast of the same case. Elaborating further, while drawing attention of this Court towards copy of the statement of the informant of the case crime no.0575 of 2021 recorded on 29.09.2022, it is submitted that when the statement of the informant of that case was recorded on 29.09.2022 before the trial Court a false incident of 02.10.2022 is shown and FIR was lodged and no such incident, as claimed by the informant and victim, has ever occurred.

6. It is vehemently submitted that in support of allegation of rape there is only and only the statements of the prosecutrix/victim and the allegations are not supported by any medical evidence as in the medical examination conducted on 12.12.2022 no abnormality or injury etc has been found on the person of the prosecutrix. It is vehemently submitted that though the prosecutrix was of a very tender age, but the same is immaterial as the instant case is a clear counter-blast case of the earlier FIR lodged on behalf of father of the applicant.

7. It is next submitted that the applicant is languishing in jail in this case since 01.02.2023 and he is having criminal history of one case which was lodged on behalf of the informant's party bearing case crime no.0576 of 2021, however, in that case the applicant has been granted bail. 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.

8. 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.

9. Learned counsel for the informant/complainant vehemently opposes the bail plea of the applicant on the ground that sexual assault has been committed with a victim of a very tender age i.e. 11-12 years. It is further submitted that the allegation of rape, as stated in the FIR, has been corroborated by the prosecutrix in her statements recorded under Sections 161 and 164 CrPC. More over, the age of the prosecutrix is just 11-12

years and there is no reason for the prosecutrix to speak falsehood. It is also submitted that the applicant could not take advantage of case crime no.0575 of 2021 as the same was also having a cross FIR which was lodged from the informant's side bearing case crime no.0576 of 2021 wherein amongst others the applicant was also an accused and it is on account of that enmity the instant offence of sexual assault has been committed.

10. Perusal of record, in the background of submissions advanced by the learned counsel for the parties, would reveal that it appears to be an admitted case of the parties that with regard to an incident which had occurred on 05.11.2021 an F.I.R. bearing case crime no.0575 of 2021 under sections 34, 452, 354, 323 and 324 IPC was lodged by the brother of the applicant at police station Mallawan, district Hardoi wherein father of the victim of the instant case was also an accused. A cross FIR of that case also appears to have been lodged by the informant's side bearing case crime no.0576 of 2021 wherein amongst others applicant was also an accused.

11. It also appears to be an admitted situation that the statement of the informant of that case was recorded before the trial Court on 29.09.2022 and the incident of sexual assault with regard to the present case is shown to have occurred on 02.10.2022. Admittedly, in support of the sexual assault there is only statement of the prosecutrix who was of very tender/young age, however, the medical report of the prosecutrix is clean and it is explained by the learned counsel for the informant/opposite party no. 2 that since the medical examination has been done with considerable delay, the same is not expected to contain any abnormality. Significantly, hymen of the prosecutrix has been found absent.

12. Various injury reports have been placed on record on behalf of the applicant with regard to the injured persons of case crime no.0575 of 2021 in order to show the brutality of assault given by the informant's party to the accused persons of this case in the incident which had occurred on 05.11.2021. In the considered opinion of this Court allegations and counter allegations may better be appreciated by the trial Court after providing opportunity to the parties to lead evidence. This Court is also conscious of the fact that established enmity is a double-edged-weapon which may provide a motive to the parties to commit offence and also to implicate falsely. Without advertent to further discussion with regard to merits of the case, keeping in view all the facts and circumstances of the case, in the considered opinion of this Court, the facility of bail may be extended to the applicant, subject to certain

conditions/restrictions. The applicant is languishing in jail in this case since 01.02.2023 and criminal history of one case has been adequately explained. 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.

13. 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.

14. Let the accused/applicant-**Avaneesh**, 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 make any contact with the prosecutrix or any of the prosecution witnesses directly or indirectly or through any social platform e.g. whatsapp, facebook and instagram etc. He will appear on each and every dates before the trial Court which would be fixed by the trial Court and would do all which is necessary for the expeditious disposal of the case and if due to any exigency he is not in a position to appear before the trial Court, he shall instruct his counsel engaged at the trial Court level to do all which is necessary for expeditious disposal of the case, including cross-examination of the prosecution witnesses and applicant would also file an undertaking before the trial Court that whenever the prosecution witnesses would be in attendance, he would not seek any adjournment on any pretext and violation of this condition (moving of application seeking adjournment when the prosecution witnesses would be in attendance) would alone be a sufficient ground for the trial Court to cancel the facility of bail granted by this Court.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

17. 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 :- 23.11.2023MVS/-