

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5564 of 2023

Applicant :- Ram Jag

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

Counsel for Applicant :- Ganga Prasad Mishra, Kailash Nath Mishra

Counsel for Opposite Party :- G.A., Santosh Kumar Tripathi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Vide order dated 22.11.2023, liberty was granted to learned counsel for the applicant to mention this case. In compliance of the same, this case was mentioned to be taken up out of turn in the morning.

2. Heard Shri Kailash Nath Mishra, learned counsel for the accused-applicant, learned A.G.A. for the State as well as Shri Santosh Kumar Tripathi, learned counsel for the opposite party NO.2/ complainant/ informant and perused the record.

3. This bail application has been moved by the accused/applicant- **Ram Jag** for grant of bail, in Case Crime No. 42/2023, under Sections 376/452/506 I.P.C. and Section 3/4 Protection of Children from Sexual Offences Act, 2012, Police Station- Itiyathok, District- Gonda, 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 though the prosecutrix in her statement recorded under Section 161, 164 Cr.P.C. has supported the allegation of rape, but when her statement was recorded before the trial Court as P.W.-2, she became hostile and has categorically stated that applicant/accused had not committed anything wrong with her and having regard to the hostility of the star witness of this crime, the conviction of the applicant would be a remote possibility.

6. It is further submitted that no abnormality, injury etc. has been found in the medical examination report of the prosecutrix and as per her educational credential, here age was 17 years at

the date and time of the incident while as per ossification test, her age has been assessed 18-19 years.

7. It is next submitted that applicant is in jail in this case since 25.01.2023 and he is not having any criminal history 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., on the other hand, 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 Santosh Kumar Tripathi, learned counsel for the opposite party NO.2/ complainant/ informant also opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence.

10. Having heard learned counsel for the parties and perusal of the record would fortify that the prosecutrix has been testified before the trial Court as P.W.-2, she has not alleged any allegation against the applicant and it is in this background, it is submitted that since the star witness of this crime has become hostile, the conviction of the applicant would be a remote possibility. Applicant is in jail in this case since 25.01.2023 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- **Ram Jag** 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 :- 21.12.2023

Gurpreet Singh