

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8055 of 2023

Applicant :- Babadeen @ Gobre

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. U.P. Lucknow

Counsel for Applicant :- Kamal Swaroop Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Babadeen @ Gobre** for grant of bail, in Case Crime No.45 of 2023, under Sections 376, 323, 506 I.P.C., Police Station Gosainganj, District Lucknow, 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 F.I.R. of this case has been lodged by the prosecutrix herself stating therein that on 19.01.2023 at about 05:00pm. when she had gone to pick wood, she was overpowered by the applicant and started committing rape on her and on an alarm raised by her, her Jethani namely Raj Kumari arrived and attempted to rescue her on which she was assaulted by the applicant with a danda, whereby she sustained injuries on her head. It is also stated that at relevant point of time, her husband was not available at home. In the statements recorded under Sections 161 and 164 Cr.P.C., the prosecutrix has corroborated the incident of rape.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the story as cooked up by the informant/prosecutrix is highly concocted, fabricated and could not be believed on the touchstone of probability. Elaborating further, it is submitted that the F.I.R. of this case has been lodged with considerable delay and the ground, which has been taken for delayed lodging of the F.I.R., is to the tune that the husband of the prosecutrix/victim was not present at home, which is patently false. In this regard attention of this Court has

been drawn towards the statement of one Ram Kumar, a copy of which has been placed as Annexure No.8 to the bail application, who had in categorical terms stated that on 19.01.2023, he was present in front of the farmhouse with his son Ved Prakash and the son of the victim had arrived and asked him to persuade his father Avadhesh as he was scolding his mother and he had gone to the house of Avadhesh and has persuaded him not to do *maarpeet* with the victim. It is, therefore, submitted that the absence of husband of the prosecutrix is not substantiated by any material.

6. It is further submitted that simple incident of *maarpeet* has been given the colour of sexual assault as the applicant is a chowkidar at a farmhouse and the victim and her family members used to steal dead woods from there in order to cook their food and when they were asked not to do, a quarrel/fight was raised by them and this false case has been lodged against the applicant. It is also submitted that no injury of any kind has been sustained by the prosecutrix belying the whole story of sexual assault and the injury sustained by Raj Kumari is a simple injury, which could be self inflicted. The prosecutrix is aged about 40 years while the age of the applicant is 72 years and thus by any stretch of imagination, he may not involve himself in an offence like present one.

7. It is next submitted that applicant is in jail in this case since 26.01.2023 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. Having heard learned counsel for the parties and having perused the record, it is evident that age of the applicant is stated to be 72 years while the age of the prosecutrix is shown as 40 years. Though allegations of sexual assault has been alleged by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C., but various submissions have been raised on behalf of the applicant in order to show that the story as stated by the prosecutrix is highly improbable due to inherent weaknesses. Admittedly no injury etc. or any abnormality has been found in the medical examination report of the prosecutrix, while simple injury has been found on the

head of injured Raj Kumari. It is urged that simple incident of *maarpeet*/quarrel has been given the colour of sexual assault. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 26.01.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Babadeen @ Gobre** 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.

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 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 :- 2.12.2023

Anupam S/-