

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8136 of 2023

Applicant :- Vinod Kumar

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

Counsel for Applicant :- Amit Kumar Gaur,Rahul Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed by the State is taken on record.
2. Learned counsel for the applicant submits that he would not file rejoinder affidavit to the counter affidavit filed by the State.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Vinod Kumar** for grant of bail, in F.I.R./Crime No. 0082 of 2023, under Sections 376-D, 506 I.P.C. and Section 5(g)/6 P.O.C.S.O. Act, 2012, Police Station Lonikatra, District Barabanki, during trial.
5. 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.
6. It is further submitted that even if the case of the prosecution, as is surfaced in the F.I.R. and in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. is taken on its face, it would emerge that it was the co-accused who had committed sexual assault on the prosecutrix while the co-accused Vivek and applicant were standing with a distance and they did not rescue the prosecutrix.
7. It is vehemently submitted that the allegation of committing rape has been attributed to co-accused Abhishek and the role of standing on the boundary of a field has been assigned to the applicant and co-accused Vivek. Thus, without there being any active participation in any manner in the alleged act Section 376-D I.P.C. may not attract against the applicant.

8. It is further submitted that injury, which has been shown in the medical examination of the prosecutrix, may only be attributed to the co-accused against whom the allegation of committing rape has been assigned and the same may not be imputed to applicant.

9. It is also submitted that the investigating officer during the course of investigation has exonerated the accused Vivek while the applicant who was standing on the identical footing as of Vivek has been charge-sheeted without there being sufficient evidence and material. Applicant is languishing in jail in this case since 31.03.2023 and he is not having any criminal history. 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.

10. Learned A.G.A. on the other hand submits that since the applicant was in association with main accused Abhishek, he would be included within the definition of Gang Rape, as offence under Section 376-D I.P.C. and, therefore, he is not entitled to be released on bail.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that in the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. no allegation of commission of rape has been assigned to the instant applicant rather the prosecutrix has attributed the role of committing sexual assault on co-accused Abhishek, while the role of only rescuing the prosecutrix has been assigned to the applicant, which according to learned counsel for the applicant, may not be termed any offence, as it may only be said at the most a moral obligation. Thus, the role of the instant applicant is distinguishable from the role of the main accused Abhishek. Applicant is languishing in jail in this case since 31.03.2023 without any criminal antecedents. 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.

12. 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- **Vinod Kumar** 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 on the merits of the case.

Order Date :- 13.10.2023

Praveen