

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 8665 of 2023

**Applicant :-** Atul Pandey

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

**Counsel for Applicant :-** Arun Kumar Tripathi

**Counsel for Opposite Party :-** G.A.,Rajesh Singh

**Hon'ble Mohd. Faiz Alam Khan,J.**

1. The name of Shri Rajesh Singh is printed in the cause list as counsel for the opposite party no.2/complainant, however, he is not present nor any request has been made on his behalf to adjourn the case.
2. Heard Shri Arun Kumar Tripathi, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Atul Pandey** for grant of bail, in Case Crime No.0517 of 2022, under Sections 341, 504, 506, 376-D I.P.C. and Section 5(g)/6 of the P.O.C.S.O. Act, Police Station Antu, District Pratapgarh, 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 F.I.R. of this case has been lodged by the mother of the prosecutrix on 10.10.2022 with regard to the incident occurred on 08.10.2022 with considerable delay with the allegations that on 08.10.2022 at about 06:00am., when the prosecutrix was going by bicycle, she was dragged into a lonely place by the applicant and other accused persons and an attempt was made by them to commit rape on her, however, she was rescued by the villagers.
6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that in the F.I.R., which has been lodged by the mother of the prosecutrix, there is no whisper about the commission of rape and even in the statement of the prosecutrix recorded under Section 161 Cr.P.C., there is no allegation of

commission of rape and after many days of recording of this statement, statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein she for the very first time imputed the allegation of rape, therefore, the allegation of rape has been levelled under the influence of her family members.

7. It is further submitted that age of the prosecutrix as per her educational credentials is more than 17 years and 5 months at date and time of the alleged incident and her radiological age has been assessed as more than 18 years and thus she was almost major at the date and time of the alleged incident and at first she refused to undergo any medical examination, but later on she was medically examined on 02.11.2023, however, no abnormality or injury etc. has been found on her person. There is no evidence in support of the allegation of sexual assault and there is only and only untrustworthy statements of the prosecutrix, which could not be believed.

8. It is next submitted that applicant is in jail in this case since 26.11.2022 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.

9. 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.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix was aged about 17 years and 5 months as per her educational credentials and 18 years as per ossification test at the date and time of the alleged incident. Admittedly no abnormality or injury of any kind has been found in medical examination report of the prosecutrix, which has been conducted with considerable delay. It is to be highlighted that the prosecutrix earlier had herself refused to undergo any medical examination. She stated in her statement recorded under Section 164 Cr.P.C. that her clothes were also torn by the applicant and other co-accused persons, however, no such clothes have been given to the investigating officer. There is no allegation of rape in the statement of the prosecutrix recorded under Section 161 Cr.P.C. as well as in the statement of the informant and in the F.I.R. and in this background it is submitted that material improvement has been made by the prosecutrix in its story as was emerging from the F.I.R. Charge-sheet in this case has already been filed.

Applicant is in jail in this case since 26.11.2022 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- **Atul Pandey** 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 :- 2.12.2023**

Anupam S/-