

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9531 of 2022

Applicant :- Suresh Kumar

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

Counsel for Applicant :- Jeya Rai, Ali Moid, Atul Verma, Hari Krishna Verma, Kumar Jaikrit, Shrikant Mishra

Counsel for Opposite Party :- G.A., Anil Kumar Srivastava, Sweta Swarankar

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Atul Verma, learned counsel for the accused-applicant, Shri Prashant Tiwari holding brief for Shri Anil Kumar Srivastava, learned counsel for opposite party no.2/ complainant/ informant 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- **Suresh Kumar** for grant of bail, in Case Crime No.131 of 2022, under Sections 363, 376, 506 I.P.C. and 3/4 POCSO Act, Police Station Gosainganj, District Sultanpur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in the instant case on account of established enmity between the informant's family with the applicant.

4. It is next submitted that the First Information Report of the case has been lodged by the uncle of the victim on 20.3.2022 at Police Station Gosainganj, District Sultanpur alleging therein that the victim aged about 13 years had gone early in the morning for easing out but did not return thereafter. However, the prosecutrix appears to have returned herself and her statement under Sections 161 and 164 Cr.P.C. was recorded, wherein she has alleged commission of sexual assault to the applicant by stating that she was sleeping in her house and the applicant after pressing her mouth with his hands, dragged her out of house and had taken her to the house of one Jugna @ Chandrawati (cousin of the applicant), where he had committed rape with her and then left her in the 'jungle' and thereafter she returned back to her house in the morning. In her statement recorded under Section 164 Cr.P.C. she improved the story to

the tune that she was taken by the applicant to the house of Jugna @ Chandrawati, where in presence of Chandrawati, the applicant had committed rape with her.

5. Highlighting the above facts, it is vehemently submitted that the victim in her statement recorded under Section 164 Cr.P.C. had categorically admitted that a dispute pertaining to some land is existing between her family and the family of the applicant. Reliance in this regard has been placed on record as Annexure No.7, which is a copy of the plaint of a partition suit allegedly filed by one Sahab Lal against 5 private defendants.

6. It is also submitted that the story as cooked up by the informant in order to falsely implicate the applicant is so improbable that the same could not be believed by any prudent person as the prosecutrix is shown to have been abducted from her house where her mother and younger brother were sleeping and thereafter had taken to the house of one Jugna @ Chandrawati, wherein also her family members were sleeping and it is in that house, the sexual assault is stated to have been committed, which is highly improbable.

7. It is also submitted that it is only on account of established enmity between the two families, the FIR of this case has been lodged. The prosecutrix has been medically examined on 22.3.2022 and no abnormality or injury of any kind has been noticed on her person. It is submitted that though the age of the prosecutrix as per her educational credential is 14 years, 6 months and 15 days and as per ossification test her age has been assessed as 14-16 years but the tender age of the prosecutrix is immaterial in this case as the case itself *prima facie* appears to be highly improbable. The applicant is in jail in this case since 16.4.2022. 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. on the other hand submits that the applicant is accused of committing heinous offence, therefore he is not entitled to be released on bail.

9. Shri Prashant Tiwari, learned brief holder has also opposed the prayer of bail of the applicant by submitting that the sexual assault has been committed with a girl of a tender age, therefore he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that though the prosecutrix is of a tender age but various submissions have been raised by

learned counsel for the applicant, highlighting that the manner in which the occurrence is shown to have occurred could not be believed by any prudent person. It is highlighted that the prosecutrix is shown to have been abducted from his house where she was sleeping with her mother and younger brothers and had taken by the applicant to the house of his cousin where all the family members of his cousin (Jugna @ Chandrawati) were sleeping and it is in that house, the rape is stated to have been committed, which could not be believed by any prudent person. The applicant is in jail in this case since 16.04.2022 and he is not having any criminal history. Charge sheet in this case has been submitted. His presence may 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 - **Suresh 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.

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 :- 13.10.2023

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