

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8915
of 2023

Applicant :- Mohit Gautam

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

Counsel for Applicant :- Sarvesh Kumar
Pandey, Vineetapandey

Counsel for Opposite Party :- G.A., Mahendra Pratap

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Sarvesh Kumar Pandey, learned counsel for the accused/applicant, Shri Mahendra Pratap, learned counsel for opposite party no.2/ complainant 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- **Mohit Gautam** for grant of bail, in Case Crime No. 87/2023, under Sections 376, 328, 504, 506 IPC & 5/6 POCSO Act, Police Station Gudamba, District Lucknow, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report of this case has been lodged by the prosecutrix herself on 18.3.2023 alleging therein that her age is about 17 years and the applicant who is a resident of the same locality and was a friend of her brother has given a tablet mixed in water to her whereby she became unconscious and thereafter he committed rape on her and also clipped some nude photographs and on the pretext of making these photographs viral, the prosecutrix was being sexually assaulted by the applicant from past one and a half year. It is also alleged that the applicant used to visit the house of the victim in a highly intoxicated state and on 15.02.2023 he came there with a knife in his hand and tried to do sexual intercourse with her but when she resisted, he again committed sexual assault on her after intimidating her with a knife. It is also stated that the

applicant is also intimidating the family members of the victim/informant. The statement of the prosecutrix was also recorded under Sections 161 and 164 Cr.P.C. wherein she narrated the same facts as has been highlighted by her in the First Information Report.

4. Highlighting the above facts, it is vehemently submitted that the story as cooked up by the prosecution in order to falsely implicate the applicant could not be believed on the touch stone of probability. Elaborating further, it is submitted that after thorough investigation the charge sheet has been filed in this case and not a single photograph have been given by the prosecutrix or by any other person on her behalf to the Investigating Officer, which may be termed as obscene and therefore very foundation of the case of the prosecution that the prosecutrix was being subjected to rape on the pretext of making her nude photographs viral has become non existent, making the whole prosecution story highly doubtful and concocted.

5. It is vehemently submitted that the falsity of the case of the prosecution may also be assessed with the demeanor and behavior of the prosecutrix while she was being examined by the Magistrate at the time of recording of her statement under Section 164 Cr.P.C. when she was specifically asked by the Magistrate as to why she used to open the door of the house when she was earlier subjected to rape by the applicant, however the prosecutrix did not reply this query and remained silent.

6. It is further submitted that there are material contradictions in the facts as narrated in the FIR and the story as has been stated in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C.

7. Learned counsel for the applicant has also drawn attention of this Court towards the statement of the brother of the prosecutrix in order to show that the statement given by this witness is highly improbable and could not be believed.

8. It is also highlighted that the prosecutrix in the FIR as well as in her statements recorded under Sections 161 and 164 Cr.P.C. has stated her age to be of 17 years and thus in the background

of her admission with regard to the age of 17 years, the date of birth as shown in the educational credentials may not be deemed conclusive and the same is yet to be determined/ adjudicated after providing opportunity to lead the evidence to the parties.

9. It is further submitted that the applicant is in jail in this case since 19.3.2023. He is student and his career has also been adversely affected by his detention in prison. He is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

10. Learned A.G.A. on the other hand submits that the applicant is accused of committing heinous offence and therefore he is not entitled to be released on bail.

11. Shri Mahendra Pratap, learned counsel appearing for opposite party no.2/ complainant vehemently opposes the prayer of bail of the applicant on the ground that the prosecutrix is/ was of very tender age and thus if she had not behaved in a manner suggested by the accused, no adverse inference may be drawn. It is also submitted that as the prosecutrix was minor at the date and time of the incident and the trauma which she has faced might have refrained her from disclosing the misdeeds of applicant to her father and brother and therefore sexual assault which was being regularly committed by the applicant has not seen the light of the day earlier and therefore, if any delay had occurred in lodging the FIR, the same is not material and the same has been explained in the FIR itself. It is further submitted that the father of the applicant is intimidating the prosecutrix and other prosecution witnesses.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that in the FIR lodged by the prosecutrix herself and in her statement recorded under Sections 161 and 164 Cr.P.C. she has stated her age as of 17 years. In her educational credentials her date of birth has been recorded as 1.5.2007, whereby she has come of about 15 years and 9 months at the time of incident. The medical report of the prosecutrix is clean, however, she has been medically examined after many days of the alleged incident. Allegations have been

levelled that by clicking of obscene/ nude photographs which was clicked after sexual assault was committed at first by the applicant, the prosecutrix was being blackmailed and was subjected to rape for one and half years. It appears to be an admitted situation that neither any nude/ obscene photograph of the prosecutrix was given/ collected to/ by the Investigating Officer. and even during the proceedings of this case no photograph of that nature has been presented by either party. In this background, it is vehemently submitted that very basis of the case of the prosecution has become missing and it could not be believed that the prosecutrix without there being any reason would remain silent for one and half year during which time the allegation of rape has been levelled. The statement of the prosecutrix recorded under Section 164 Cr.P.C. has also been highlighted in order to show that the prosecutrix did not reply to a query made by the Magistrate at that point of time with regard to why she used to open the door of the house for the applicant when she was being sexually assaulted by him. The applicant is in jail in this case since 19.3.2023 and he is not having any criminal antecedent. His presence may be secured before the trial court by placing adequate conditions.

13. Be that as it, the fine points with regard to the claims and counter claims of factual nature may only be adjudicated/ appreciated by the trial court at the time of appreciation of evidence at an appropriate time. Suffice is to say, that detailed examination of evidence which may be termed as appreciation of evidence, especially in the cases which are hotly contested, should not be touched upon as the same may affect the course of trial either way. The applicant appears to be in jail in this case for the last 9 months. The FIR admittedly has been lodged after one and half years of the commission of first sexual assault. The medical report of the prosecutrix is clean. Applicant is in jail for the last nine months without any criminal antecedents.

14. Thus, without making merits and demerits of the case, in the considered opinion of this Court the case of bail is made out in favour of the applicant. The apprehension of the prosecution with regard to tampering of the evidence may be taken care of by placing suitable conditions on the movement of the applicant.

15. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

16. Let the applicant- **Mohti Gautam** involved in the aforesaid case be released on bail on 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 attempt to make any contact with the prosecutrix either directly or indirectly or through any social platform or with any of the prosecution witnesses and the violation of these conditions alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this court.

(ii) It is informed that the case is now listed before the trial court for recording the statement of the prosecutrix on 9.1.2024. The trial court shall make all out efforts to record the statement of the prosecutrix on the same day i.e. 9.1.2024 and the accused or his counsel shall not take any adjournments till the examination, cross examination, re-examination of the prosecutrix is completed and violation of this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.

(iii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iv) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(v) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

17. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

18. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

19. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 20.12.2023

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