

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9533 of 2022

Applicant :- Vishal Kumar

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

Counsel for Applicant :- Anil Kumar Awasthi, Neeraj Trivedi, Ravi Pandey

Counsel for Opposite Party :- G.A., Mohd. Salman, Mohd. Zishan

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. The State along with its counter affidavit has enclosed the service report pertaining to the opposite party no.2 sent by the concerned police station i.e. Police Station Maurawan, District Unnao.
3. The cause list would also reveal the names of Shri Mohd. Salman and Shri Mohd. Zishan as learned counsels for opposite party no.2, however, none of them is present before this Court nor any request has been made on their behalf to adjourn the case.
4. Heard Shri Neeraj Trivedi, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Vishal Kumar** for grant of bail, in Case Crime No. 133 of 2022, under Sections 323, 504, 506, 452, 354-B, 354, 376 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Maurawan, District Unnao, during trial.
6. 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 mother of the victim on 08.04.2022 at Police Station Maurawan, District Unnao alleging that on 26.03.2022 at about 1:00 pm. the applicant entered into her house and molested her daughter, aged about 17 years and also intimidated her of dire

consequences and also clicked some obscene photographs and further intimated to make them viral. The statement of the prosecutrix was recorded under Section 161 and 164 Cr.P.C. wherein she appears to have fortified the allegations of the F.I.R.

7. Highlighting the above facts, it is vehemently submitted that neither in the first information report nor in the statements of the prosecutrix/victim recorded under Section 161 and 164 Cr.P.C. any allegation with regard to the commission of rape has been levelled and the investigating officer without there being any evidence/material appears to have submitted charge sheet amongst others under Section 376 I.P.C. also, which was totally uncalled for.

8. It is further submitted that even if the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. are taken on its face, the same may only reach upto molestation or outraging the modesty of the prosecutrix/victim. However, the allegations of molestation and clicking of obscene photographs have not found corroboration by any evidence, as during the course of investigation, no such photographs or video has been recovered and in her medical examination no injury, etc. has been found on the person of the prosecutrix. Thus, in support of the allegations, there is only and only the untrustworthy statements of the prosecutrix.

9. It is next submitted that applicant is languishing in jail in this case since 02.05.2022 and he is not having any criminal history 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., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

11. Perusal of the record would reveal that as per ossification test the age of the prosecutrix has been assessed as 19 years while through her educational credentials her age is coming as 17 years, 10 months and 21 days at the date and time of the incident. The medical report of the prosecutrix is clean. No abnormality or any injury have been found therein. Admittedly in her statement recorded under Section 161 and 164 Cr.P.C., the allegations levelled are not attracting commission of rape, as she has confined her allegations only upto outraging her modesty and she has not stated anywhere in these statements with regard to the commission of rape. The applicant appears to

have been detained in prison in this case since 02.05.2022 without any criminal antecedents 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- **Vishal 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 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 this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.**

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

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

(iv) 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 :- 19.12.2023

Praveen