

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10386 of 2022

Applicant :- Kishan

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

Counsel for Applicant :- Anil Kumar Tiwari, Abhinav Srivastava, Ajai Kumar, Rahul Srivastava, Rakesh Kumar Nayak, Vivek Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the communication sent by the Chief Judicial Magistrate, Ambedkar Nagar the opposite party no.2 has been sufficiently served, however, he is not represented.
2. Heard 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- **Kishan** for grant of bail, in Case Crime No. 0225/2022, under Sections 376, 313 IPC and ¾ POCSO Act, Police Station Kotwali Akbarpur, District Ambedkar Nagar, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the First Information Report as well as in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. the allegation of sexual assault has been levelled, however the prosecutrix has been testified before the trial court as P.W.2 wherein while in her cross examination she has acknowledged the compromise which had taken on 1.11.2021 by stating that on 1.11.2021 compromise was written between her family and family members of the applicant and she had also endorsed her signature on that compromise. The compromise which has been acknowledged by the prosecutrix in her cross examination has been highlighted by learned counsel for the applicant, a copy of

which placed at page no. 15 of the paper book, wherein amongst others it is stated that the parties are compromising their dispute as application has been given in the concerned Police Station on the basis of suspicion and the parties now don't want to take action on the same.

5. It is vehemently submitted that it has been admitted in categorical terms in the compromise which has been acknowledged by the prosecutrix in her cross examination that application was given to the concerned Police Station on the basis of suspicion only.

6. It is further submitted that allegation of the FIR are not found corroborated with medical evidence and there is no medical evidence with regard to causing any abortion etc. nor commission of rape.

7. It is also submitted that the applicant is in jail in this case since 22.06.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted 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.

8.. 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.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the fact of sexual assault as has been stated by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. and the allegations with regard to causing abortion has also been levelld. There is no material produced to substantiate the factum of abortion. The medical report of the prosecutrix is clean. The prosecutrix while under cross examination has acknowledged the compromise allegedly executed on 1.11.2021, a copy of which is stated to be available on record as Annexure No.2 wherein it is mentioned that the application before the concerned Police Station was given due to some misunderstanding and on the basis of suspicion. The applicant is in jail in this case since 22.6.2022 and he is not having any criminal antecedent. His presence may be secured before the trial court by placing

adequate conditions.

10. 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**.

11. Let the applicant- **Kishan** involved in the aforesaid 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.

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

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

14. 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 :- 6.11.2023

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