

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9782 of 2023

Applicant :- Monu

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

Counsel for Applicant :- Srees Kumar Srivastava

Counsel for Opposite Party :- G.A.,Nishant,Raj Bahadur Singh Rawat,Suman Kanoujia

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed on behalf of the opposite party No.4 is taken on record.
2. Heard Shri Srees Kumar Srivastava, learned counsel for the accused-applicant, Shri Raj Bahadur Singh Rawat, learned counsel for the opposite party No.4 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 - **Monu** for grant of bail, in Case Crime No. 164/2023, under Sections 452, 323, 506, 376 I.P.C. & Section 3/4 Protection of Children from Sexual Offences Act, Police Station- Purwa, District- Unnao, 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 the F.I.R. of this case has been lodged by the father of the prosecutrix on 21.04.2023 at Police Station- Purwa, District- Unnao alleging therein that the applicant in the night of 19.04.2023 entered into his house when his daughter was cooking food and his mother was sleeping inside the room. The applicant dragged his daughter into a room and started assaulting and molestating her and when she resisted and raised an alarm, the mother of the informant arrived, on which the applicant fled away from the scene after intimidating her. The statement of the prosecutrix was recorded under Section 164 Cr.P.C wherein she stated her age to be of 17 years and also that the applicant was insisting her to talk with him.

6. It is further submitted that the victim was in a relationship with the applicant and when she has been seen by her family members, she under the pressure of them has given statements under Sections 161 and 164 Cr.P.C.

7. It is also submitted that the allegations of *maar peet* are also not truthful as when the applicant and the prosecutrix were seen together, it was the father of the prosecutrix (informant), who had assaulted the prosecutrix.

8. It is further submitted that in the first information report as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C., there is no allegation of rape and the story has been improved by the prosecutrix in her statement recorded under Section 164 Cr.P.C. wherein for the very first time, the allegation of sexual assault has been leveled.

9. It is next submitted that the applicant is in jail in this case since 07.05.2023 without any criminal history and the charge sheet in this case has already been filed 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. for the State vehemently opposes the prayer of bail of the applicant on the ground that applicant is accused of committing an heinous offence and having regard to the manner in which the crime has been committed, he is not entitled to be released on bail.

11. Shri Raj Bahadur Singh Rawat, learned counsel appearing for the informant/complainant vehemently opposes the prayer of bail of the applicant on the ground that as per her High School certificate, the date of birth of the prosecutrix is 28.10.2005 by which she comes about of 17 years, 5 months and 11 days and having regard to the manner in which the crime has been committed, the applicant is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having peruse the record, it appears to be truthful that in the first information report as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C., the allegation of commission of rape has not been levelled and it was in the statement of the prosecutrix recorded under Section 164 Cr.P.C. before the Magistrate, the allegation of commission of rape has been leveled to the applicant. However, in the statement of the prosecutrix recorded under Section 161 Cr.P.C., it has been alleged that that the applicant had dragged her in a room and after assaulting her, attempted to rape her and on an alarm

raised by her, her grand-mother had arrived whereon the applicant had fled away from the scene. Thus, though in the statement of the prosecutrix recorded under section 161 Cr.P.C., the factum of commission of rape has not been levelled, but it has been imputed that she was assaulted for the purpose of commission of rape. The medical injury report of the prosecutrix which has been placed by the applicant himself at page No.31 of the paper book would reveal that she has sustained about three injuries which prima facie could not be self-inflicted and the false implication of the applicant may not be inferred at this stage, when no prior enmity has been pleaded.

13. It is also to be highlighted that injury No.1 and 2 were also kept under observation which reflects the magnitude of the injury. Thus, having regard to the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. and having regard to the fact that the same are prima facie corroborated by the medical evidence, I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant - **Monu** is hereby **rejected**.

14. However, the trial court is directed to proceed with the trial and make all out efforts to conclude the same expeditiously without granting unnecessary adjournments to the parties and if within one year from today, the trial is not concluded, the applicant would be at liberty to approach this Court for renewal of his prayer of bail.

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.

16. A copy of this order be immediately sent to the trial Court for strict compliance through the Sessions Judge concerned.

Order Date :- 19.10.2023

Gurpreet Singh