

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9834 of 2023

Applicant :- Praveen Kumar Mishra

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lko.

Counsel for Applicant :- Lalit Kishore Tiwari, Karuna Shankar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State and supplementary affidavit filed on behalf of the applicant are taken on record.
2. Heard Shri Lalit Kishore Tiwari, 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- **Praveen Kumar Mishra** for grant of bail, in Case Crime No.259 of 2023, under Sections 376, 419, 506 I.P.C., Police Station Biswan, District Sitapur, 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 in the F.I.R. as well as in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., allegation of rape has been levelled, however, statement of the prosecutrix was recorded before the trial court as P.W.-2 and of the informant (father of the prosecutrix) as P.W.-1. The prosecutrix though was intact in her chief examination but in her cross examination, she stated that she had never met with the applicant nor the incident, which has been shown in her statement recorded under Section 161 and 164 Cr.P.C., has ever occurred and she has also disowned her statement recorded under Section 161 Cr.P.C. and further stated that she has not stated the facts as written in her statement recorded under Section 164 Cr.P.C. and the said statement was given while she was under the influence of the police personnel.
6. Highlighting the above facts, it is vehemently submitted on

behalf of the applicant that since the star witness of this crime namely prosecutrix has become hostile, chances of conviction of the applicant are very remote.

7. It is further submitted that identically placed co-accused person of the alleged crime, namely, Mohammad Sufiyan has been granted bail by a Coordinate Bench of this Court, vide order dated 12.12.2023 passed in Criminal Misc. Bail Application No.14597 of 2023.

8. It is next submitted that applicant is in jail in this case since 28.06.2023 and he is not having any criminal history, 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.

9. 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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant with regard to the fact that identically placed co-accused person of the alleged crime, namely, Mohammad Sufiyan has been released on bail by a Coordinate Bench of this Court.

10. 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 and also on the basis of principle of parity, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicant- **Praveen Kumar Mishra** 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.

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 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 :- 22.12.2023

Anupam S/-