

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10936 of 2022

Applicant :- Danish Ali

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

Counsel for Applicant :- Aman Kumar Shrivastav, Lalla Ji Maurya, Rahul Kumar, Vimal Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Rahul Kumar, learned counsel for the accused-applicant 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- **Danish Ali** for grant of bail, in Case Crime No. 411 of 2022, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Dhaurahara, District Lakhimpur Kheri, 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 father of the prosecutrix on 06.07.2022 at Police Station Dhaurahara, District Lakhimpur Kheri alleging that his daughter, aged about 16 years has enticed away by the applicant with the help of other co-accused persons. After recovery of the prosecutrix, her statement under Section 161 Cr.P.C. was recorded, wherein she has confined her allegation only with regard to the abduction, however, in her statement recorded under Section 164 Cr.P.C. the prosecutrix has alleged commission of rape by the applicant.

4. Highlighting the above facts, it is vehemently submitted that initially the prosecutrix has denied to undergo any medical examination, however, later on her medical examination report was prepared wherein no abnormality or any injury, etc. has been found on her person and, thus, in support of the allegations of sexual assault, there is only and only the statements of the prosecutrix.

5. It is further submitted that the age of the prosecutrix has been

assessed as 16 years and 06 months on the basis of her educational credentials but she has been examined as P.W.-1 before the trial court, wherein in her in-chief-examination, she has supported the allegation of commission of rape, however, in her cross-examination she has chosen not to support the allegations of commission of rape and have disowned her statement given under Section 161 Cr.P.C. and with regard to the statement recorded under Section 164 Cr.P.C., she has stated that the same was given under the influence of her parents.

6. It is vehemently submitted that since the prosecutrix has chosen to become hostile before the trial Court, the chances of conviction of the applicant are remote. Applicant is languishing in jail in this case since 21.07.2022 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.

7. 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.

8. Perusal of the record would reveal that though, in her statement recorded under Section 164 Cr.P.C., allegation of rape has been attributed to the applicant by the prosecutrix, however, in her statement recorded before the trial Court as P.W.-1, she was intact in her in-chief-examination, but she has chosen to become hostile, while being cross-examined by defence, she has also disowned her statement recorded under Section 161 Cr.P.C. and further stated that her statement under Section 164 Cr.P.C. was given while she was under the influence of her parents and she was never sexually assaulted by the applicant and it is in this background, it is submitted by learned counsel for the applicant that since the prosecutrix, whose evidence is akin to the evidence of an injured person has become hostile, the conviction of the applicant would be a remote possibility. Applicant is languishing in jail in this case since 21.07.2022 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the accused/applicant- **Danish Ali** 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 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.

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

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

13. 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