

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10119 of 2023

Applicant :- Sunil Gupta

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

Counsel for Applicant :- Sandhya Devi, Babita Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State in its counter affidavit has enclosed the information given by the concerned police station to the informant/complainant of this case, thus the opposite party no.2 appears to have been served, however, she 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- **Sunil Gupta** for grant of bail, in Case Crime No.240 of 2023, under Sections 376-D, 323, 504, 506 I.P.C. and 5(G)/6 of the P.O.C.S.O. Act, Police Station Kotwali City, District Hardoi, 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 F.I.R. of this case has been lodged by moving an application under Section 156(3) Cr.P.C. and the allegations contained therein have been aggravated with the help and advice of a legal professional. It is also submitted that the incident in the application moved under Section 156(3) Cr.P.C. has been shown to have occurred on 26.08.2022 while the F.I.R. could only be lodged after 8 months on 06.04.2023 and the explanation, which has been given for occurrence of such a huge delay, could not be believed.
6. It is also submitted that though the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has alleged commission of sexual assault by the applicant and co-accused, who are real brothers, but having regard to the inherent weakness in the statement of the prosecutrix and keeping in

view the improbability of the incident, occurrence could not be believed more so the place of occurrence as shown is a busy place, where offence of such kind could not be committed moreover the allegation of the F.I.R. as highlighted in the statement of the prosecutrix are not corroborated by any medical evidence as medical examination report of the prosecutrix is clean. The prosecutrix as per her educational credentials is aged about 16 years and one month, while as per ossification test, her age has been assessed as 18 years.

7. It is next submitted that applicant is in jail in this case since 16.04.2023 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.

8. 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.

9. Having heard learned counsel for the parties and having perused the record, it is evident that F.I.R. of this case has been lodged under the orders passed by the court under Section 156(3) Cr.P.C. The application under Section 156(3) Cr.P.C. has been moved on 24/29.09.2022 while the occurrence is stated to have occurred on 26.08.2022. Thus even if the F.I.R. is deemed to have been registered on 06.04.2023, it is evident that the application under Section 156(3) Cr.P.C. could only be moved on 24/29.09.2022, thus there appears a delay of more than 30 days. The prosecutrix has supported the allegation of rape in her statements recorded under Sections 161 and 164 Cr.P.C. Medical examination of the prosecutrix could only be held on 08.04.2023 and the same is clean including pathological reports, thus in support of the allegation of rape, there is only oral statements of the prosecutrix. Various submissions have been raised by learned counsel for the applicant in order to show that the incident is highly improbable and having regard to the place of occurrence, sexual assault could not be believed. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 16.04.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

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, 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- **Sunil Gupta** 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 :- 8.11.2023

Anupam S/-