

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11276 of 2022

Applicant :- Sandeep

Opposite Party :- State Of U.P. Thru. The Prin. Secy. Home Lko.

Counsel for Applicant :- Anil Kumar, Hari Narayan Singh, Vishun Narain

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Vishun Narain, 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- **Sandeep** for grant of bail, in Case Crime No. 197 of 2022, under Sections 376, 323, 504, 506, 427, IPC, Police Station Kachhauna, District Hardoi, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
4. It is further submitted that the FIR of this case has been lodged by the husband of the prosecutrix/victim by moving an application under Section 156(3) CrPC with the allegations that in the midnight of 25.01.2022, the applicant entered in his house and started committing rape with his wife and when he became conscious, he found the applicant indulging into sexual intercourse with his wife and when he tried to apprehend him, the applicant snatched his mobile phone and broke it. The incident was also seen by Lalta and Pappu who were guarding their agricultural fields nearby. However, the applicant succeeded in fleeing from the spot.
5. It is further submitted that the prosecutrix/victim in her statements recorded under Sections 161 & 164 CrPC, she has reiterated the same averments as stated in the FIR by her husband.
6. Highlighting the above facts, it is vehemently submitted that the FIR of the instant case has been lodged under the orders of a

court passed under Section 156(3) CrPC and the allegations therein have been aggravated with the help of a legal professional. It is further submitted that the statement of the prosecutrix/victim was also recorded in the court of Magistrate under Section 164 CrPC wherein she only stated that she was subjected to rape and thereafter, she did not tell anything in detail, despite being asked by the Magistrate, which is itself a prima facie proof that the incident is patently false, concocted and could not be believed.

7. It is also submitted that the manner in which the incident is shown to have occurred, could not be believed by any prudent person as the sexual assault is shown to have been committed in presence of the husband of the prosecutrix/victim and was also witnessed by the two persons who were guarding their agricultural fields nearby. It is further submitted that the medical report of the prosecutrix/victim is also clean and no abnormality or injury of any kind has been found therein.

8. It is further submitted that the applicant is in jail in this case since 9.7.2022 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed 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.

9. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the statements of the prosecutrix/victim were recorded under Sections 161 & 164 CrPC. In her statement recorded under Section 164 CrPC before the Magistrate, she has not stated the occurrence in detail except that she was subjected to rape. The prosecutrix/victim is shown to have been sexually assaulted while sleeping near her husband (informant/complainant). The medical report of the prosecutrix/victim is also clean and no abnormality or injury of any kind has been found therein. The applicant is in jail in this case since 9.7.2022 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

11. 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**.

12. Let the applicant- **Sandeep** involved in the aforesaid case be released on bail on 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.

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

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

15. 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 :- 12.12.2023

Shravan