

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10778 of 2023

Applicant :- Gajraj

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

Counsel for Applicant :- Paresh Mishra, Ashhad Ali Siddiqui, Gopal Narain Misra, Rajiv Kumar Bajpai

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State along with its counter affidavit has filed communication sent by the concerned police station as Annexure CA-1 perusal of which would reveal that the opposite party no. 2 has been served, however, he 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- **Gajraj** for grant of bail in Case Crime No.055 of 2022, under Sections 376(3), 504 and 506 IPC read with Section 3/4 The Protection of Children from Sexual Offences Act, 2012 lodged at Police Station Malihabad, District Lucknow, during trial.

4. Learned counsel for the accused-applicant, while pressing the bail application, submits that it is a case of false implication. Though in the FIR lodged by the father of the prosecutrix and in the statements of the prosecutrix recorded under Sections 161 and 164 CrPC allegation of committing sexual assault has been levelled against the applicant, but when the informant as well as the prosecutrix have been testified before the trial Court as PW-1 and PW-2, they both have not supported the version of the prosecution in their statements recorded before the trial Court. It is further submitted that while the informant stated to have lodged the FIR against the applicant on the ground that the incident of only *Maar-Peet* had occurred and on the instigation of villagers he has lodged the FIR and, on being declared hostile, he has disowned his statement recorded under Section 161 CrPC, while the prosecutrix, who has been testified as PW-2 before the trial Court, in her statement categorically ruled out any incident of sexual assault committed by the applicant. She has also disowned her statements recorded under Sections 161

CrPC. With regard to her statement recorded under Section 164 CrPC, she stated the same has been given under the influence of police personnel. It is vehemently submitted that since the prosecutrix has not supported the version of the prosecution before the trial Court, conviction of the applicant would be a remote possibility. It is further submitted that the applicant is languishing in jail in this case since 20.02.2022 and he is not having any previous 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.

5. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the prosecutrix was aged about 13 years and, therefore, having regard to the fact that sexual assault has been committed with the girl of a very tender age, the applicant is not entitled to be released on bail.

6. Having heard learned counsel for the parties and having perused the record, it is evident that though the prosecutrix was of very tender age at the date and time of the incident and she had supported the allegation of rape in her statements recorded under Sections 161 and 164 CrPC, but in her statement recorded before the trial Court, she has disowned her statement recorded under Sections 161 and 164 CrPC and had categorically stated that no such incident (incident of sexual assault) had occurred with her and it is stated by her that a minor quarrel with regard to pet animals entering into her agricultural field had taken place. It is also submitted that there is remote possibility of conviction of the applicant in this case as the prosecutrix has denied sexual assault being committed by the applicant on her. The applicant is languishing in jail in this case since 20.02.2022 without any previous criminal antecedents and, the presence of the applicant may be secured before the trial court by placing adequate conditions.

7. 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**.

8. Let the accused/applicant- **Gajraj**, 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.

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

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

11. 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 1.11.2023

MVS/-