

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11592 of 2022

Applicant :- Chandrakesh

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

Counsel for Applicant :- Shailesh Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed by the State is taken on record.
2. As per communication sent by the Chief Judicial Magistrate, Pratapgarh of date 18.04.2023, opposite party no.4 has been served personally, however, he is not represented.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Chandrakesh** for grant of bail, in Case Crime No.91 of 2022, under Sections 354Ka, 504, 506, 376 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Kunda, District Pratapgarh, during trial.
5. 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.
6. It is further submitted that F.I.R. of this case has been lodged by the father of the prosecutrix stating therein that on the relevant date and time, the prosecutrix had gone to ease herself, where she was overpowered by the applicant and he started molesting her and on an alarm raised by the prosecutrix, villagers arrived at the scene, whereon the applicant fled away after intimidating the prosecutrix and villagers. The prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. has corroborated the facts as narrated in the F.I.R. with the improvement that it is stated in her statements that the applicant had committed sexual assault on her. Medical report of the prosecutrix is clean as no pathological adverse finding or injury etc. has been seen during the course of medical examination and as per ossification test, her age has been determined as 15-

16 years while as per her educational credentials, her age was 12 years and 7 months.

7. It is vehemently submitted on behalf of the applicant that though the prosecutrix has stated about the commission of sexual assault in her statement recorded under Sections 161 and 164 Cr.P.C., the same cannot be believed in absence of any medical evidence with regard to the same and also in the background that father of the prosecutrix is also claimed himself to be an eye witness of the incident and he had not alleged the factum of sexual assault and has stated about only of molestation, therefore, the allegation of rape has been crafted afterwards.

8. It is also submitted that during the course of trial, statement of the informant as well as prosecutrix has been recorded before the trial court as P.W.-1 and P.W.-2 and the informant/father of the prosecutrix in his cross examination has stated that he had arrived in the village after 7-8 days of the incident and the application, which has been given by him, was not read over to him and thus he was not aware as to what was written therein and this witness has been declared hostile.

9. It is further submitted that the P.W.-2 - prosecutrix has also been declared hostile while she was under cross examination and she in her cross examination has stated in categorical terms that on the basis of a quarrel, which had taken place between her mother and mother of the applicant, a false F.I.R. was lodged by her father while no rape or sexual assault was committed by the applicant with her. She has disowned her statement recorded under Section 161 Cr.P.C. and with regard to the statement given under Section 164 Cr.P.C., she stated that the same was given while under pressure of the police personnel. It is also submitted that since the prosecutrix has become hostile, the prosecution may not be able to secure conviction of the applicant.

10. It is next submitted that applicant is in jail in this case since 23.04.2022 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.

11. 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.

12. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R. allegations with regard to only molestation has been levelled. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has stated about the commission of rape and while she was examined before the trial court as P.W.-2, she in her cross examination has not supported the version of the prosecution and stated that she has not given statement under Section 161 Cr.P.C. and her statement recorded under Section 164 Cr.P.C. has been given while under the influence of the police personnel. The age of the prosecutrix is insignificant in this case as she has ruled out the commission of rape. It is, in this background, vehemently submitted by learned counsel for the applicant that since the only witness of the crime has been declared hostile and has not supported the version of the prosecution, conviction of the applicant would be a remote possibility. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 23.04.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Chandrakesh** 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.

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

16. Identity, status and residence proof of the applicant and

sureties be verified by the Court concerned before the bonds are accepted.

17. 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 :- 7.11.2023

Anupam S/-