

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10643 of 2023

Applicant :- Farman

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per communication sent by In-charge Chief Judicial Magistrate, Shravasti of date 08.09.2023, the opposite party no.2 (complainant) has been sufficiently served. However, the opposite party no. 2 is not represented.

2. Heard Shri Manoj Kumar Singh, 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- **Farman** for grant of bail in F.I.R./Case Crime No.586 of 2022, under Sections 457, 323, 504, 506 and 376 D.B. I.P.C. and Section 5/6 POCSO Act and Section 3(2)5 S.C./S.T. Act lodged at Police Station Malhipur, District Shravasti, 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 by dragging his name on the basis of local political enmity. It is further submitted that though in the FIR which has been lodged by mother of the prosecutrix allegation of rape has been levelled, but in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C., there is no allegation of rape and, at the most, the allegation, which has been levelled by the prosecutrix in her statements, may attract an offence under Section 354 I.P.C. It is further submitted that the incident is shown to have occurred on 01.12.2022 and the prosecutrix has been medically examined on 05.12.2022 and no abnormality or injury of any kind has been found on her person which belies the story, as cooked up by the prosecution. It is also submitted that falsity of the prosecution case would be evident from the fact that the statement of the prosecutrix has been recorded before the trial Court as PW-1 wherein she has not imputed any allegation against the applicant and has been declared hostile and she has stated in categorical terms that the applicant before this Court has not committed any incident with

her and, thus, as the prosecutrix has not imputed any allegation against the applicant before the trial Court, conviction of the applicant is not possible. It is also submitted that the applicant is in jail in this case since 04.12.2022 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. It is also submitted that identically placed co-accused person, namely Akhlam Alias Aklam has been granted bail by this Court, vide order dated 05.10.2023 passed in Criminal Misc. Bail Application No. 10599 of 2023.

6. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence. It is further submitted that injury has not been noticed or inflicted as the offence pertains to attempt to rape which has been levelled by the prosecution and, the prosecutrix is of very tender age and, therefore, the applicant is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix is of very tender age. In her statements recorded under Sections 161 and 164 Cr.P.C., she has not imputed any allegation which may attract the commission of sexual assault. She has also been examined before the trial Court and has become hostile and did not support the allegations, as levelled in her statements recorded under Sections 161 and 164 Cr.P.C. and has given a clean chit to the applicant. On this score, it is submitted that there is a remote possibility of conviction of the applicant. The evidence which has been produced before the trial Court will have to be appreciated on the basis of established sound principles of appreciation of evidence and no opinion on this point may be given by this Court. However, having regard to the totality of the facts and circumstances of the case and keeping in view the fact that the prosecutrix has not supported the prosecution case before the trial Court and also the fact that the applicant is not having any previous criminal history, facility of bail may be extended to him and his presence may be secured before the trial court by placing adequate conditions. Identically placed co-accused person, namely Akhlam Alias Aklam has already been granted bail by this Court.

8. 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**.

9. Let the accused/applicant- **Farman**, 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.

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

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

12. 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 :- 19.10.2023

Praveen