

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10922 of 2023

Applicant :- Insan Ali

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

Counsel for Applicant :- Srees Kumar Srivastava

Counsel for Opposite Party :- G.A.,Amit Tewari,Amit Tewari,Vimal Kumar Awasthi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Vinod Kumar, holding brief of Shri Srees Kumar Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Amit Tewari, learned counsel for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Insan Ali** for grant of bail, in Case Crime No.333 of 2023, under Sections 342, 376, 323, 504 I.P.C., Police Station Kotwali Gangaghat, District Unnao, during trial.

3. 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.

4. It is further submitted that the prosecutrix is about about 30 years and the F.I.R. of this case has been admittedly lodged with the delay of 8 months and no reasonable explanation of the same has been given. Elaborating further, it is submitted that even if the case of the prosecution as is evident from the F.I.R. as well as statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. is believed as it is, it would emerge that the prosecutrix, who was major, was having relationship with the applicant and they had resided together for 8 months in a rented accommodation and there were some other tenants residing nearby and in these 8 months, the prosecutrix has not objected and they frequently cohabited and therefore, the relationship of the applicant and the prosecutrix was consensual and sexual relations established between them were consensual act of two adults and the same may not be given the colour of rape or sexual assault. In this regard, statement of the prosecutrix recorded under Section 161 Cr.P.C. was highlighted by learned counsel for the applicant, wherein certain questions were posed

by the investigating officer to the prosecutrix and the reply given by the prosecutrix in order to show that the prosecutrix was a consenting party and when their relations became strained, instant F.I.R. has been lodged.

5. It is further submitted that criminal history of six cases is being alleged against the applicant, however, the same has been explained in para no.3 to 8 of the supplementary affidavit dated 28.08.2023. Applicant is in jail in this case since 13.06.2023 and 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.

6. 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.

7. Shri Amit Tewari, learned counsel for the informant/complainant vehemently opposes the prayer of bail of the applicant on the ground that the applicant has sexually assaulted the victim on the pretext of granting bail to her husband, who was detained in prison in connection with some other case and keeping in view the role played by the applicant in the alleged crime, he is not entitled to be released on bail moreover he is having criminal history of six cases.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix is aged about 30 years. It has come in her statements recorded under Sections 161 and 164 Cr.P.C. that she had resided with the applicant at some rented accommodation and in response to various questions posed by the investigating officer, certain answers were given by her and the same have been highlighted by learned counsel for the applicant in order to show that the prosecutrix was a consenting party. It is also urged that since the prosecutrix was major and she was a consenting party, no offence has been committed by the applicant. Much emphasis have been given by learned counsel for the informant/complainant towards the criminal history of the applicant. There cannot be any doubt that the criminal history of an accused is relevant at the time of adjudication of his plea of bail, but it could not be the sole basis for rejecting his bail application when otherwise on merits, he is having a good case for grant of bail. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 13.06.2023. The

presence of the applicant could be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the accused/applicant- **Insan Ali** 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.

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

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

13. 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 :- 17.11.2023

Anupam S/-