

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10864 of 2023

Applicant :- Omkar

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

Counsel for Applicant :- Arvind Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Arvind Kumar Verma, 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- **Omkar** for grant of bail, in Case Crime No. 210 of 2023, under Sections 452, 376, 323 IPC, Police Station Laharpur, District Sitapur, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant has not committed any offence as claimed by the prosecution/ victim.

4. It is further submitted that First Information Reprobate of this case has been lodged by the husband of the prosecutrix on 27.3.2023 at Police Station Laharpur, District Sitapur against the applicant alleging therein that on 26.3.2023 at about 8:00 pm.he had gone to witness a dance event and when he returned at about 10:00 pm. he heard an alarm raised by his wife aged about 25 years and when he entered into the house he found the applicant committing sexual assault on his wife. However, the applicant managed to fled away from the scene and his mobile phone was left there. The facts as narrated in the First Information Report has been reiterated by the prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C.

5. Learned counsel for the applicant while drawing the attention of this Court towards the above facts vehemently submits that the age of the prosecutrix was admittedly 25 years at the date and time of the incident, she was a married lady and were having many children and the story as cooked up by her could not be believed on the touch stone of probability.

6. Elaborating further, it is submitted that some days prior to the

alleged incident the mobile phone of the applicant was lost and when he came to know that the same mobile phone is with the complainant/ informant he insisted for its return and it is on account of that enmity, the instant FIR has been lodged.

7. It is further submitted that the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. are highly contradictory. It is highlighted that in the statement of the prosecutrix recorded under Section 161 Cr.P.C. she claimed to be sleeping with her children and also that the applicant entered into her house while in her statement recorded under Section 164 Cr.P.C. she stated that front door of the house was broken by the applicant in order to get access in the house of the prosecutrix.

8. Attention of this Court has been drawn by learned counsel for the applicant towards the medical report of the prosecutrix, wherein no injury of any kind has been found on her person nor any pathological abnormality has been found and it is submitted with considerable force that just after 12-14 hours of the alleged incident, the prosecutrix is claimed to have been medically examined and even not a scratch has been found on her person and thus the medical evidence is not in line of the oral evidence.

9. It is further submitted that the applicant is in jail in this case since 30.3.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted and there is not apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

10. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

11. Having heard learned counsel for the parties and perusal of the record would reveal that allegation of committing sexual assault on victim by entering into her house has been claimed by the prosecution. At the time of the incident, husband of the prosecutrix, was not present and when he was returning from a dance event, he claimed to have heard an alarm raised by the prosecutrix. Admittedly the applicant is not shown armed with any weapon. Some contradictions have been highlighted by learned counsel for the applicant which have emerged in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. The age of the prosecutrix is about 25 years. The applicant is in jail since 30.3.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been

submitted. His presence may be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the applicant- **Omkar** 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.

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

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

16. 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 :- 16.11.2023

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