

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11189 of 2023

Applicant :- Yamuna Prasad Ojha Alias Daroga

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

Counsel for Applicant :- Ashok Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that in compliance of earlier order of this Court, opposite party no.2/informant has been served and communication sent by the Chief Judicial Magistrate, Pratapgarh in this regard along with report of concerned police station is placed as annexure CA-3 to the counter affidavit filed by the State, thus opposite party no.2 appears to have sufficiently been served, however, she 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-Yamuna Prasad Ojha Alias Daroga for grant of bail, in Case Crime No. 372 of 2020 under Section 323, 504, 506, 354-Kha, 376-D Indian Penal Code, Section 5-G/6 POCSO Act, Police Station Antu, District Pratapgarh, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has falsely been implicated in this case and the FIR was lodged by the mother of the victim on 06.08.2020 at police station Antu, District Pratapgarh alleging that the victim had gone to feed fodder for the cow on 02.08.2020 at 7.00 p.m. and at that time the applicant arrived and dragged her in a orchard and on alarm raised by the victim, he started abusing her and after intimidating fled away from the scene. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. wherein the allegation of the FIR has been corroborated.

5. Highlighting above facts, it is submitted that neither in the FIR nor in the statement of the prosecutrix recorded under Section 161 Cr.P.C., any allegation with regard to sexual assault has been levelled and the allegations were confined to the

molestation, however, in the statement recorded under Section 164 Cr.P.C. for the very first time allegation of rape has been introduced which could not be believed in the background of the fact that there are many cases pending between the family of the applicant and family of the victim.

6. It is further submitted that allegations as levelled by the victim in her statement recorded under Section 164 Cr.P.C. are not corroborated by the medical evidence as in the medical examination report of the victim no injury or no abnormality of any kind has been noticed.

7. Identically placed co-accused, namely, Jai Kumar Tiwari alias Raju Tiwari has been granted bail by a coordinate Bench of this Court vide order dated 14.12.2021 passed in Bail No. 1359 of 2021.

8. It is next submitted that applicant is languishing in jail in this case since 05.06.2023 and apart from the instant case, one case pertaining to Section 174-A IPC was lodged against him with regard to his alleged non appearance before the Investigating Officer in this case, however, issuance of process under Section 82 Cr.P.C. was without observing the mandatory guidelines as highlighted by the Apex Court and thus, the same is not having bearing on the fate of instant bail application and a bail application with regard to that case shall be moved if the applicant is granted bail in this case. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled to be released on bail.

10. Perusal of the record it appears that there are many civil cases pending between the family of the applicant and the victim. In the FIR as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C, there is no whisper with regard to commission of rape and it was in the statement of prosecutrix recorded under Section 164 Cr.P.C., for the very first time the factum of rape has been introduced. The medical report of the prosecutrix is clean. The applicant is in jail in this case since 05.06.2023. Criminal history of one case appears to have adequately been explained. Identically placed co-accused Jai Kumar Tiwari alias Raju Tiwari has been granted bail by a coordinate Bench of this Court. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Let the **accused/applicant- Yamuna Prasad Ojha Alias Daroga** 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.

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

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

14. 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 :- 27.10.2023

Renu/-