

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11364 of 2023

Applicant :- Dinmani Mishra

Opposite Party :- State Of U.P. Thru. Secy. Of Home Deptt. Lucknow

Counsel for Applicant :- Arvind Kumar Srivastava

Counsel for Opposite Party :- G.A., Ram Lakhan Vishwakarma

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Arvind Kumar Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Ram Lakhan Vishwakarma, learned counsel for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Dinmani Mishra** for grant of bail, in Case Crime No.355 of 2020, under Sections 376-D, 506 I.P.C., Police Station Motigarpur, District Sultanpur, 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 applicant's family and the family of the prosecutrix are highly inimical towards each other as various applications had already been moved by the prosecutrix against the applicant and his family members pertaining to a dispute regarding immovable property. Attention of this Court has been drawn on the observation made in the General Diary Parcha No.25 of date 03.12.2020, extract of which has been placed at page no.48 of the paper book, wherein an observation has been made by the maker of the entry that the prosecutrix and accused persons are having long standing enmity with regard to immovable property and the incident appears to be doubtful.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the investigating officer of this case has not investigated the allegations of the F.I.R. in depth and solely on the basis of statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. charge sheet has been

submitted.

6. It is further submitted that story as stated by the prosecutrix in the F.I.R. as well as in her statements recorded under Section 161 and 164 Cr.P.C. is highly concocted, fabricated and could not be believed on the touchstone of probability and thus in support of the allegation of sexual assault, there are shaky statements of the prosecutrix.

7. It is next submitted that applicant is in jail in this case since 04.08.2023. No criminal case was pending against the applicant at the time of lodging of the F.I.R., however, subsequent to instant F.I.R., another F.I.R. has been lodged by mother of the prosecutrix and the bail application in that case could only be moved, if facility of bail is extended in favour of the applicant in this case. 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.

8. 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.

9. Shri Ram Lakhan Vishwakarma, learned counsel for the informant/complainant by referring to the various documents placed with counter affidavit filed by the complainant, submits that the applicant and his family members are in a habit of assaulting and humiliating the prosecutrix and her family members. It is also highlighted that local police was in connivance with the accused persons and it is in this scenario, medical of the prosecutrix was not conducted promptly and the same could only be conducted when an application in this regard was moved before the Inspector General of Police. It is also submitted that at the time of alleged incident, there is no dispute with regard to any movable property and the same has been created afterward. Thus having regard to the material/evidence available against the applicant, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix has supported the allegations of the F.I.R. in her statements recorded under Section 161 and 164 Cr.P.C. It is also true that while lodging F.I.R. in General Diary *Qayami* an observation has been made by the person, who had entered the entry that the

parties are highly inimical towards each other with regard to the dispute pertaining to an immovable property. It is submitted that it is only on account this enmity, the instant F.I.R. has been lodged. Various submissions have been made including that there is no medical evidence in support of the allegations and also that even any scratch has not been found on the body of any person, who at that point of time was present along with the prosecutrix, in order to show improbability of the occurrence, however, the same is subject matter of adjudication by the trial court after providing an opportunity to the parties to lead the evidence and this Court refrain itself from entering the area of appreciation of evidence, which is in the domain of trial court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 04.08.2023. The presence of the applicant could be secured before the trial court by placing adequate conditions. Suffice is to say that having regard to all the facts and circumstances of this case and also keeping in view the endorsement made in the General Diary at the time of lodging of the F.I.R., facility of bail may safely be extended to the applicant with certain conditions.

11. 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**.

12. Let the accused/applicant- **Dinmani Mishra** 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 attempt to contact any of the prosecution witnesses including those already examined either directly, indirectly or through any social platform and violation of this condition alone shall be a ground for cancellation of bail granted by this Court.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without

seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

15. 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/-