

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11241 of 2023

Applicant :- Ajay Rawat

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

Counsel for Applicant :- Alok Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per the communication received by the learned A.G.A. and have also been enclosed in the counter affidavit of the State as C.A.-1, the opposite party no.2 appears to have been served personally/sufficiently. However, he 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- **Ajay Rawat** for grant of bail, in Case Crime No. 0312 of 2023, under Sections 376, 506 I.P.C. and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012, Police Station Safdarganj, District Barabanki, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the father of the prosecutrix on 23.07.2023 stating therein that the applicant was in a habit of teasing his daughter aged about 14 years and have committed sexual assault on her many times and he is also intimidating them and in the intervening night at about 3:00 am. he entered into his house and had committed sexual assault on his daughter and when an attempt was made to apprehend him, he fled away from the scene after intimidating. The prosecutrix in her statement recorded under Section 161 and 164 Cr.P.C. had supported the allegations of the F.I.R.
5. Highlighting the above facts, it is vehemently submitted that the story, as cooked up by the prosecutrix/victim is highly improbable and could not be believed. Elaborating further, it is submitted that in her statement recorded under Section 161 Cr.P.C., it has been stated by the prosecutrix that the applicant had committed rape on her many times, however, no complaint

of any kind has been made prior to lodging of the F.I.R.

6. It is also submitted that the manner in which the sexual assault is shown to have been committed in categorical terms projects that the prosecutrix was a consenting party, as she had not raised any alarm when she was being taken to a lonely house in the weeing hours of the night i.e. at 3:00 am.

7. It is next submitted that on the next day of the alleged incident the prosecutrix was medically examined and no abnormality or injury of any kind has been found on the person of the deceased which may suggest forceful sexual assault. Applicant is languishing in jail in this case since 24.07.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

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, therefore, he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix has been assessed through ossification test as 17 years and having regard to the two years variable either side she may be of the age of 15 or 19 years. Thus, the age of the prosecutrix is yet to be determined by the trial Court having regard to the evidence which may be adduced before it by the parties. Various submissions have been raised by learned counsel for the applicant in order to show that even if the case of the prosecution is taken on its face, the same may only project that the prosecutrix may be a 'consenting party', as she chooses not to raise any alarm. It is also highlighted that the factum of rape is not corroborated by any medical evidence, as the medical report of the prosecutrix is clean. Applicant is languishing in jail in this case since 24.07.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Ajay Rawat** 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 :- 20.11.2023

Praveen