

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 11281 of 2023

**Applicant :-** Hariom Mishra

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

**Counsel for Applicant :-** Vaibhav Srivastava, Vishnu Pratap Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Heard Ms. Vaibhav Srivastava, learned counsel for the accused-applicant, as well as learned A.G.A. for the State and perused the record.
2. The State in its counter affidavit at page-9 has enclosed the communication sent by the concerned police station pertaining to service affected upon the opposite party no. 2. Thus, the opposite party no. 2 appears to have been sufficiently served. However, she is not represented.
3. This bail application has been moved by the accused/applicant- **Hariom Mishra** for grant of bail in Case Crime No.0224 of 2023, under Sections 376, 328, 313, 504 and 506 IPC read with Section 3/4 POCSO Act lodged at Police Station Kotwali Ayodhya, District Ayodhya, during trial.
4. 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.
5. It is further submitted that the FIR of the instant case has been lodged by moving an application under Section 156(3) CrPC and the allegation alleged therein have been exaggerated with the help of a legal professional. It is further submitted that the incident of sexual assault has been shown to have occurred on 30.03.2021 and thereafter admittedly the prosecutrix stated to have remained in relation with the applicant, however, the FIR could only be lodged on 17.04.2023 and there is no explanation with regard to this huge delay occurred in lodging the FIR. It is further submitted that story, as cooked up by the prosecutrix/victim in FIR as well as in her statements recorded under Sections 161 and 164 CrPC, is highly improbable,

concocted and could not be believed on the touchstone of probability, moreover, the allegation is not finding any corroboration with the medical evidence. It is vehemently submitted that it could not be believed that for two and a half years the prosecutrix was being subjected to sexual assault and would not make any complaint to any public authority.

6. It is next submitted that applicant is in jail in this case since 28.05.2023 and he is not having any criminal history, 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.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a 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.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix has been shown in the F.I.R. as 19 years and in her statements recorded under Sections 161 and 164 Cr.P.C. she has also stated her age to be 19 years, however, in educational credentials her date of birth is shown as 10.01.2008. It has been vehemently submitted on behalf of the applicant that there are major contradictions so far as the age of the prosecutrix is concerned and the same is yet to be finally adjudicated by the trial Court and her age, as is emerging from the educational record, may not be deemed to be conclusive. The first sexual assault on the prosecutrix admittedly had taken place on 30.03.2021, but the F.I.R. has been lodged on 17.04.2023 with a delay of two years. Various submissions have been raised by learned counsel for the applicant in order to show that the story, as has been cooked up by the prosecutrix, is highly improbable and could not be believed. The finer points, which have been highlighted by the learned counsel for the applicant, may be better appreciated by the trial court after perusing the evidence, which may be tendered by the prosecution in support of its case. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 28.05.2023 without any previous criminal history. 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- **Hariom 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 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.

**[Mohd. Faiz Alam Khan, J.]**

**Order Date :- 1.11.2023**

MVS/-