Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11586 of 2023

Applicant :- Mahnthe Alias Ram Janam
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Others
Counsel for Applicant :- Rajesh Kumar Pathak,Anurag Kumar Srivastav
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mr. Rajesh Kumar Pathak, learned counsel for the accused-applicant, as well as learned A.G.A. for the State and perused the record.

Rejoinder affidavit is taken on record.

Along with the counter affidavit, filed by the State, copy of communication, allegedly transmitted by the police station Khodare, District Gonda, has been placed, perusal of which would reveal that the informant/complainant has been sufficiently served, however, she is not represented.

2. This application has been moved by the accused/applicant-**Mahnthe alias Ram Janam** for grant of bail in Case Crime No.0138 of 2023, under Sections 376D/354Kha/506 IPC lodged at Police Station Khodare, District Gonda, 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 in the FIR which has been lodged by the mother of the prosecutrix it is alleged that on 11.06.2023 at about 11 p.m. when the prosecutrix aged about 14 years was coming back to her house, the applicant and other accused persons overpowered her and committed rape and also filmed a video and threatened her that if any proceeding would be instituted, they would make the video viral. Statements of the prosecutrix, recorded under Sections 161 and 164 CrPC, have corroborated the fact of rape.

5. Highlighting the above facts, it is submitted that the FIR of

this case has been lodged on 18.06.2023 pertaining to the incident which had occurred on 11.06.2023 and no explanation of this huge delay caused in lodging of the FIR has been given. Thus, the facts stated in the FIR become doubtful. It is further submitted that prior to lodging of the FIR a *village panchayat* had taken place with regard to an incident occurred on 14.06.2023 pertaining to *mar-peet* which had occurred on 13.06.2023 and it is only on account of that incident of *mar-peet* a false FIR with regard to sexual assault has been lodged. It is also submitted that the prosecutrix has been examined medically on 18.06.2023, however, no abnormality or any injury etc. has been found in her medical examination, belying the whole prosecution story. It is also submitted that the prosecutrix at the date and time of the alleged incident was major since in educational credentials her date of birth has been shown as 01.01.2007.

6. Elaborating further, it is submitted that in the certificate of class-ix which has been relied on by the prosecution, wherein date of birth of the prosecutrix is shown as 01.01.2007 it is also stated therein that the last institution where the prosecutrix had got education is Jan Kalyan Aarya Vaidik Vidyalay, Allipur Gonda and an information has been obtained from the said college under the Right to Information Act and the answer, which has been provided is to the tune that the prosecutrix has never got education in Jan Kalyan Aarya Vaidik Vidyalay, Allipur Gonda. Thus, the educational certificate of the prosecutrix may not be deemed/presumed conclusive at this stage so far as age is concerned and the age of the victim is subject to the determination by the trial Court after providing opportunity to the parties to lead evidence.

7. It is next submitted that the applicant is languishing in jail in this case since 22.06.2023 and he is not having any previous 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 evident that before lodging of the FIR of the instant case pertaining to an incident which had occurred on 11.06.2023 a *village panchayat* is said to have taken place on 14.06.2023, however, the incident pertaining to which

village panchayat was held pertains to a *maar-peet*. FIR of this case has been lodged on 18.06.2023 i.e. after 7 days of the incident and it is vehemently submitted that the delay is fatal having regard to the *'panchayat'* which was held on 14.06.2023. A perusal of the compromise which had allegedly taken place on 14.06.2023 between the parties would reveal that it was agreed that no proceedings would be instituted by the parties against each other. Though the prosecutrix has supported the allegations of rape in her statements recorded under Sections 161 and 164 CrPC, but the defence of the applicant appears to be that the allegations levelled in statements of the prosecutrix are not finding corroboration by any medical evidence. Age of the prosecutrix, as recorded in school record is also disputed on the score that in the certificate relied on by the prosecution it is mentioned that the prosecutrix has also got education at Jan Kalyan Aarya Vaidik Vidyalay, Allipur Gonda, however, when an information, under the Right to Information Act, was taken from Jan Kalyan Aarya Vaidik Vidyalay, Allipur Gonda, it was revealed that the prosecutrix has never got education there. The applicant is languishing in jail in this case since 22.06.2023 without any previous 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- **Mahnthe alias Ram Janam**, 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 24.11.2023
MVS/-

Digitally signed by :-
MANOJ VIKRAM SINGH CHAUHAN
High Court of Judicature at Allahabad,
Lucknow Bench