

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11559 of 2023

Applicant :- Nanke

Opposite Party :- State Of U.P Thru. Addl. Secy. Deptt. Of Home, Civil Secrt, Lko. And Others

Counsel for Applicant :- Ashish Kumar Singh, Manish Vaish

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State is taken on record.
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- **Nanke** for grant of bail, in Case Crime No.124 of 2017 (Complaint Case No.141 of 2019), under Sections 376(2)F, I.P.C., and Section 3/4(2) of P.O.C.S.O. Act, Police Station Kauria, District Gonda, 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 F.I.R. of this case has been lodged by one Devi Prasad on 21.06.2017 at Police Station Kauria, District Gonda against 4 named and 3 unknown persons including the applicant alleging therein that in the intervening night of 11/12.06.2017 at about 12:00 hours in the night, the accused persons had abducted his daughter aged about 15 years and on 13.06.2017, she was found in unconscious state and she informed him that she has been raped by the applicant, Atma Ram and Ram Murat. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has fortified the allegations of sexual assault.
6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that in the statement of the prosecutrix recorded under Section 161 Cr.P.C., she had admitted that Atma Ram and applicant are her maternal uncle and real brother of her aunt Phoolmati and accused Ram Murat is the son of real sister of Phoolmati and Phoolmati is her real aunt and husband

of the Phoolmati namely Bheem Singh, who is brother of the informant, is in jail on account an F.I.R. lodged by the Phoolmati (his wife) against him and thus it is only on account of this enmity, the F.I.R. has been lodged.

7. It is further submitted that the incident as narrated by the victim is highly improbable and could not be believed. However, in the medical report of the prosecutrix, no abnormality or injury has been found and no definite opinion about the sexual assault was given. Thus oral allegations as levelled by the prosecutrix has not found corroboration with any medical evidence. The prosecutrix as per her educational credentials was aged about 16 years and 7 months and as per ossification test, her age has been determined as 16-17 years, however, the age of the prosecutrix is immaterial in this case as the occurrence appears to be highly improbable.

8. It is next submitted that identically placed co-accused persons of the alleged crime, namely, Atma Ram and Ram Murat Chauhan have been released on bail by Coordinate Benches of this Court, vide orders dated 19.04.2023 and 05.04.2023 passed in Criminal Misc. Bail Application Nos.14544 of 2022 and 3064 of 2023, respectively. Applicant is in jail in this case since 22.07.2023 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.

9. 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.

10. Having heard learned counsel for the parties and having perused the record, it is evident that though the prosecutrix was minor at the date and time of the alleged incident, however, she has admitted in her statement about the fact that the brother of the informant namely Bheem Singh is in jail and he is in jail on account of an F.I.R. lodged by Phoolmati and the applicant and two co-accused persons namely Atma Ram and Ram Murat Chauhan are close relatives of Phoolmati. It is in this background, it is submitted that F.I.R. of the instant case has been lodged on account of this enmity. Medical report of the prosecutrix is clean. Identically placed co-accused persons of the alleged crime, namely, Atma Ram and Ram Murat Chauhan have been released on bail by Coordinate Benches of this Court.

Charge-sheet in this case has already been filed. Applicant is in jail in this case since 22.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate 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- **Nanke** 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.

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 :- 13.10.2023

Anupam S/-