

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11494 of 2023

Applicant :- Khalil

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

Counsel for Applicant :- Anil Kumar Awasthi

Counsel for Opposite Party :- G.A.,Ashok Kumar Mishra,Pankaj Kumar

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Anil Kumar Awasthi, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant- **Khalil** for grant of bail, in Case Crime No. 298 of 2023, under Sections 376, 506 and 323 I.P.C., Police Station Isanagar, District Kheri, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant has been dragged in this case only on account of local village enmity.
4. It is further submitted that the age of the applicant is about 60 years while the prosecutrix/victim is aged about 40 years and she is a married lady and mother of four children and the story as cooked up by her could not be believed on the touchstone of probability.
5. It is vehemently submitted that the incident is shown to have occurred on 02.08.2023 and the prosecutrix was medically examined on 05.08.2023 and no injury of any kind or any abnormality has been found in the medical report and the pathological reports of the prosecutrix were also clean and, therefore, in support of the allegations of sexual assault, there is only untrustworthy statement of the prosecutrix.
6. It is also submitted that at the time of recording of the statement of the prosecutrix under Section 164 Cr.P.C. she had stated that some broken bangles, etc. had fallen at the place where the sexual assault was committed and on this basis the investigating officer had immediately inspected the spot and did

not find any of such articles, is belying the whole story as untruthful.

7. It is next submitted that applicant is languishing in jail in this case since 09.08.2023 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. Perusal of the record would reveal that the age of the prosecutrix is admittedly 40 years. She is a married lady having four children. The age of the applicant is about 60 years, as claimed by him. During the medical examination, which was conducted on 05.08.2023, no injury, etc. or any abnormality has been found. The defence of the applicant appears to be that on the basis of local '*village party-bandhi*', his name has been dragged into this false case. Applicant is languishing in jail in this case since 09.08.2023 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- **Khalil** 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 :- 21.11.2023

Praveen