

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13397 of 2022

Applicant :- Himanshu Alias Hemanshu

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

Counsel for Applicant :- Rahul Singh Rana

Counsel for Opposite Party :- G.A.,Dhirendra Pratap Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Rahul Singh Rana, learned counsel for the accused/applicant, Shri Dhirendra Pratap Singh, learned counsel for opposite party no.2/ complainant 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- **Himanshu Alias Hemanshu** for grant of bail, in Case Crime No. 0389/2022, under Sections 363, 366, 376(2) IPC and 5/6 POCSO Act, Police Station Dalmau, District Raebareli, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. In the First Information Report lodged by the father of the victim as well as in her statements recorded under Sections 161 and 164 Cr.P.C., the allegations of abduction and commission of sexual assault has been levelled against the applicant. However, the statement of the informant as well as of the prosecutrix was recorded before the trial court as P.W.1 & P.W.2, wherein both the key witnesses of this case have become hostile and have not supported the version of the prosecution.

4. It is further submitted that the prosecutrix was intact in her in chief examination, however, in her cross examination, she has categorically stated that she was neither abducted nor sexually assaulted by the applicant and when the star witness of this crime had become hostile, it does not support the version of the prosecution and it would be very difficult for the prosecution to secure conviction of the applicant before the trial court, more-so when the medical report of the prosecutrix was clean and no injury or any abnormality of any kind has been found therein.

5. The applicant is in jail in this case since 18.09.2022 and he is not having any criminal history. The conclusion of the trial

would take some time and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

6. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

7. Shri Dharendra Pratap Singh, learned counsel appearing on behalf of opposite party no.2/ complainant has not made any objection and has made a statement that he has been instructed not to oppose the plea of bail of the applicant.

8. Having heard learned counsel for the parties and having perused the record, it is evident that in the FIR as well as in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. the allegations of abduction and of sexual assault were levelled, however, the prosecutrix in her cross examination has not supported the version of the prosecution and stated that she was not subjected to rape nor was abducted by the applicant and it is in this background, it is submitted that when the star witness of this crime has become hostile, it would be difficult for the prosecution to secure conviction of the applicant. Medical reports of the prosecutrix is also clean. The applicant is in jail in this case since 18.09.2022 and he is not having any criminal history. Charge sheet in this case has already been filed. His presence may be secured before the trial court by placing adequate conditions.

9. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

10. Let the applicant- **Himanshu Alias Hemanshu** involved in the aforesaid case be released on bail on 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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 12.12.2023

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