

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11652 of 2023

Applicant :- Amit Gautam

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

Counsel for Applicant :- Smriti, Avnish Kumar Tiwari

Counsel for Opposite Party :- G.A., Pramod Kumar Singh

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Avnish Kumar Tiwari, learned counsel for the accused/applicant, Shri Pramod Kumar Singh, learned counsel appearing for complainant/ informant 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- **Amit Gautam** for grant of bail, in Case Crime No. 95/2022, under Sections 452, 376-D IPC, Police Station Tandiyawan, District Hardoi, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report of this case has been lodged by the prosecutrix herself on 14.3.2022 alleging therein that on 13.3.2022 at about 7.00 P.M. the applicant entered into her house and asked her children to leave the room and thereafter committed rape on her. She immediately informed her husband who was working at Lucknow and after his arrival the First Information report was lodged. The prosecutrix in her statement recorded under Section 161 Cr.P.C. has reiterated the commission of rape, whoever, in her statement recorded under Section 164 Cr.P.C. has assigned the role of commission of rape to the applicant as well as to co-accused Chhotakkey @ Rashid. In the medical report of the prosecutrix no definite opinion could be given for commission of rape nor any report or any abnormality has been noticed.

4. Highlighting the above fact, it is vehemently submitted that the age of the prosecutrix is about 35 years. She is having two children one was aged about 16 years and at the time of the commission of rape this child aged about 16 years is said to have arrived and raised an alarm. Thus, the story as cooked up by the prosecutrix in order to falsely implicate the applicant is highly improbable, false, concocted and could not be believed.

5. It is further submitted that there are material contradictions in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. Identically placed co-accused persons against whom allegation of commission of rape has been alleged in her statement recorded under Section 164 Cr.P.C. has been granted bail by a Coordinate Bench of this Court, vide order dated 27.7.2023 passed in Criminal Appeal No. 1605 of 2022. The applicant is in jail in this case since 15.3.2022 and he is not having any criminal antecedent. Charge sheet in this case has already been filed 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 Pramod Kumar Singh, learned counsel for the complainant/informant, vehemently submits that the rape has been committed with a lonely woman of a village and has been witnessed by her son and therefore having regard to the brutality with which the offence has been committed, he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix is about 35 years. Medical report of the prosecutrix is clean and no injury etc. has been found therein. Though in FIR and in her statements recorded under Section 161 Cr.P.C. allegations of rape were imputed only against applicant but in her statement recorded under Section 164 Cr.P.C. the prosecutrix has attributed the commission of crime to the applicant as well to co-accused Chhotakkey @ Rashid. Admittedly Chhotakkey @ Rashid has been granted bail by a Coordinate Bench of this Court. The applicant is in jail in this case since 15.3.2022 and he is not having any criminal antecedent. 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- **Amit Gautam** 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 :- 11.12.2023

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