

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11716 of 2023

Applicant :- Rizwan

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

Counsel for Applicant :- Anil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Anil Kumar Pandey, 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- **Rizwan** for grant of bail, in Case Crime No. 351/2023, under Sections 376, 323, 506, 342, 120-B IPC, Police Station Nawabganj, District Gonda, 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 has been lodged by the father of the prosecutrix wherein it has been alleged that the applicant has enticed away his daughter. On being recovered the statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C., wherein she has stated to have been abducted by the applicant and taken to his shop and sexual assault has committed on her.

4. Highlighting the above facts, it is submitted that the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. has been given under the influence of her family members.

5. Elaborating further, it is submitted that even if the case of the prosecution is taken on its face it will emerge that she has accompanied the applicant on his motorcycle and had gone to his shop and did not raise any alarm thus she was a consenting party and as at the relevant date and time of incident she was more than 18 years, no offence has been committed by the applicant. The applicant is in jail in this case since 23.7.2023 and he is not having any criminal antecedent. Medical report of the prosecutrix is clean. Charge sheet in this case has already been submitted 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. on the other submits that the applicant is accused of committing an heinous offence, therefore, he is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix was major at the relevant date and time of the incident. No abnormality or any injury etc. has been found on her person in her medical examination. It has been highlighted by learned counsel for the applicant that if the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. are taken on their face it will emerge that she was a consenting party. The applicant is in jail in this case since 23.07.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

8. 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**.

9. Let the applicant- **Rizwan** 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.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

12. 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 :- 7.11.2023

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