

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13344 of 2022

Applicant :- Mohd. Irfan

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

Counsel for Applicant :- Dwijendra Prasad Gupta, Desh Deepak Singh, Mohd. Islam Khan, Sandeep Kumar Pal

Counsel for Opposite Party :- G.A., Shashi Kant Mishra

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed by the applicant is taken on record.
2. Heard learned counsel for the accused/applicant, learned A.G.A. for the State as well as Shri Tushar Gupta, Advocate holding brief of Shri Shashi Kant Mishra, learned counsel for the opposite party no.2/informant and perused the record.
3. This bail application has been moved by the accused/applicant- **Mohd. Irfan** for grant of bail, in Case Crime No. 376 of 2022, under Sections 363, 366, 376 IPC & Section 5/6 of POCSO Act, Police Station Gudamba, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that though in the FIR lodged by the father of the prosecutrix/victim and in the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC, the allegation of rape has been levelled against the instant applicant, but during the course of the trial, the prosecutrix/victim has been testified as PW-1 and she has categorically stated that she had left her home on her own and had made a call to the applicant, but he did not come and thereafter, she had gone to the railway station where she met with a woman who advised her that if she wants to marry the applicant, she must allege that the applicant had committed sexual assault with her and it is on her advise, she returned and has levelled allegations of rape against the applicant.

6. It is also submitted that during the course of the cross examination, the prosecutrix/victim has disowned her statement recorded under Section 161 CrPC. However, she has stated that her statement under Section 164 CrPC was given on the aid and advice of a woman with whom she had met at railway station, while the truth is that she has not been sexually assaulted either by the applicant or the co-accused.

7. It is further submitted that the applicant is in jail in this case since 25.9.2022 and he is not having any criminal antecedents. Charge sheet in the matter 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.

8. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

9. Shri Tushar Gupta, Advocate holding brief of Shri Shashi Kant Mishra, learned counsel for the opposite party no.2/informant submits that he under instructions is making a statement that that the complainant/informant is not having any objection, if the facility of bail is extended to the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix/victim has not levelled any allegations against the applicant. With regard to her statement recorded before the Magistrate, she has stated that on the aid and advice of a woman with whom she had met at railway station, she has given this statement. She has also denied to have been abducted by the applicant and it is in this background, it is submitted that when the star witness of the crime i.e., victim has become hostile, the conviction of the applicant would be a remote possibility. The applicant is in jail in this case since 25.9.2022 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

11. 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**.

12. Let the applicant- **Mohd. Irfan** 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.

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 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

Shravan