

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11958 of 2023

Applicant :- Nande

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

Counsel for Applicant :- Ashutosh Bajpai

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. At the outset learned counsel for the applicant submits that on 06.10.2023 this case was directed to be listed in the list of fresh cases, however, it appears that due to some typographical error the listing of this case in the list of fresh cases has not been typed. This fact has been fortified by the Bench Secretary, who has informed that as per his record the case was directed to be listed in the list of fresh cases.
2. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
3. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary.
4. Heard Shri Santosh Kumar Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Nande** for grant of bail, in Case Crime No. 190 of 2018, under Section 376-D I.P.C., Police Station Payagpur, District Bahraich, during trial.
6. 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 victim herself by moving a written application before the S.H.O. of the Police Station Payagpur, District Bahraich on 21.07.2018 wherein no allegation of rape has been levelled and allegation only pertaining to outraging her modesty were alleged and similar statement was given by the prosecutrix to the investigating officer under Section 161 Cr.P.C.
7. It is next submitted that the applicant apprehending arrest

appeared before the Judicial Magistrate, Bahraich and secured bail under Section 354-A I.P.C. on 06.08.2018, however, thereafter, on 29.08.2018 the statement of the victim was recorded under Section 164 Cr.P.C., wherein she under the influence of some persons, who are having ill-will towards the applicant has changed the story and alleged sexual assault to the applicant and co-accused.

8. It is vehemently submitted that the first information report of this case has been lodged on the basis of a written application moved by the victim and therein no allegation of rape has been alleged, therefore, the allegation with regard to the commission of rape is after thought. Moreover, the investigating officer during the course of investigation has also recorded the statement of many witnesses who have fortified that the incident was pertaining to outraging the modesty of the prosecutrix and the incident was not pertaining to the sexual assault. The age of the prosecutrix as per her educational credentials is 20 years while on the basis of ossification test her age has been assessed as 19 years. The medical examination report of the prosecutrix is also not containing any injury or abnormality.

9. It is next submitted that applicant is languishing in jail in this case since 14.06.2023 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted fact that the first information report of this case was lodged on a written application moved by the victim herself. No allegation of commission of rape has been levelled therein as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C. The applicant secured bail for committing offences under Section 354-A I.P.C. from the Court of Judicial Magistrate, Bahraich and thereafter in her statement recorded under Section 164 Cr.P.C. the prosecutrix alleged commission of rape. The defence of the applicant appears to be that since the F.I.R. of the case has been lodged by moving a written application, the prosecutrix may not be permitted to change her statement and the allegation, as levelled in her statement recorded under Section 164 Cr.P.C., are afterthought. Applicant is languishing

in jail in this case since 14.06.2023 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.

12. 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**.

13. Let the accused/applicant- **Nande** 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.

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

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

16. 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 :- 11.10.2023

Praveen