

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12138 of 2023

Applicant :- Chhail Bihari

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

Counsel for Applicant :- Anand Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has only been filed against the applicant.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Chhail Bihari** for grant of bail, in Case Crime No. 85 of 2023, under Section 366 and 376 I.P.C., Police Station Sadulla Nagar, District Balrampur, during trial.

4. Learned counsel for the accused-applicant while drawing the attention of this Court towards the first information report, which has been lodged by the mother of the victim with the allegations that the applicant has enticed away her daughter, aged about 19 years on 08.06.2023 at about 8:00 am. and later refused to marry her, submits that it is a case of false implication and in fact the victim and the applicant were in a relationship since long. They were frequently meeting which was not liked by their family members and as the age of the prosecutrix/victim at the relevant point of time was about 20 years and the sexual relations, if any, established between them were with the free consent of the victim, no offence has been committed by the applicant.

5. In order to fortify his submissions, learned counsel for the applicant has drawn the attention of this Court towards the first information report as well as the statement of the prosecutrix, wherein her age has been shown as 19 years and towards the certificate issued by the Chief Medical Officer, Balrampur, wherein her age has been assessed on the basis of radio-logical examination as 20 years.

6. It is further submitted that there are major contradictions in

the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C., while in her statements recorded under Section 161 Cr.P.C., allegations have been levelled that she had accompanied the applicant and had gone to her house, however, having apprehension of his family members the applicant had fled away from there and did not marry her. In the statement recorded under Section 164 Cr.P.C., she had brought a new story implicating the applicant and two other accused persons, namely, Vijay Bahadur and Ansar Ahmad (one of which, namely, Ansar Ahmad was the 'pradhan' of the village at the relevant point of time) and had imputed allegations of rape to all these three accused persons.

7. It is vehemently submitted that some independent witnesses, namely, Ashok Kumar Bharadwaj and Radhey Shyam have given their affidavits to the Circle Officer of the Police Station concerned stating therein that the involvement of Vijay Bahadur and Ansar Ahmad has been wrongly imputed by the prosecutrix.

8. It is also submitted that the statement of the prosecutrix recorded under Section 164 Cr.P.C. also become untrustworthy, as the investigating officer has not relied on her statement and by doing in depth investigation, the charge sheet has only been filed against the applicant and the involvement of the other two accused persons was not found truthful. Thus, it prima facie appears that the prosecutrix has developed a false narrative in her statement recorded under Section 164 Cr.P.C., which is also not corroborated by any medical evidence, as no injury or abnormality has been found therein, while the prosecutrix has been medically examined on 12.06.2023 after a day of the alleged incident.

9. It is next submitted that applicant is languishing in jail in this case since 15.06.2023 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 situation that at the relevant point of time the prosecutrix was major. In her statement recorded under Section 161 Cr.P.C. she has not imputed any allegation of rape and only stated to have accompanied the applicant, while in her statement recorded

under Section 164 Cr.P.C., she has stated new facts alleging sexual assault by the applicant and two other accused persons. The two other accused persons involved by the prosecutrix in her statement recorded under Section 164 Cr.P.C. have been exonerated by the investigating officer and the charge sheet has only been filed against the applicant. No abnormality or injury etc. has been found in the medical examination report of the prosecutrix. Applicant is languishing in jail in this case since 15.06.2023 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- **Chhail Bihari** 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