

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13882 of 2022

Applicant :- Guddu

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

Counsel for Applicant :- Abhishek Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. The Chief Judicial Magistrate, Lakhimpur Kheri vide its communication dated 17.12.2022 informed that opposite party no.2 has been served through legal heirs, while the State in its counter affidavit has filed communication sent by the concerned police station with regard to the service affected on the opposite party no.2. Thus the opposite party no.2 appears to have been served, however, he is not represented.

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- **Guddu** for grant of bail, in Case Crime No.0637 of 2022, under Sections 363, 366, 376, 506 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Nighasan, District Lakhimpur Kheri, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

5. It is further submitted that F.I.R. of this case has been lodged by the father of the victim on 06.08.2022 with the allegations that the prosecutrix has been enticed away by the applicant with the help of co-accused and when they were approached, they intimidated the informant. On being recovered the statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C., wherein she stated to have left her home on 05.08.2022 at 05:00pm. as, according to her, she was assaulted by her father and brother and had gone to her aunt's house and remained there for 3-4 days and thereafter had gone to the house of the applicant, where she lived till 16.08.2022 and physical relations between them were also established.

Significantly in her statement recorded under Section 161 Cr.P.C. the the prosecutrix has also stated that she wants to marry the applicant and would return back to her home only on the condition when her marriage would be solemnized with the applicant.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the prosecutrix has stated to have left her home on her own and had come to the house of the applicant and thereafter physical relations are also stated to have been established with her wish and will.

7. It is further submitted that in the medical examination report of the prosecutrix, no injury or abnormality has been noticed. It is also submitted that as per the educational credentials, age of the prosecutrix is coming about 14 and half years at the date and time of the alleged incident while in her statement recorded under Section 161 Cr.P.C., she stated her age to be of 20 years, however, in her statement recorded under Section 164 Cr.P.C., she alleged her age to be of 14 and half years.

8. It is vehemently submitted that since the prosecutrix has been examined before the trial court as P.W.-2 and have not supported the case of the prosecution and have been declared hostile, it would not be possible for the prosecution to secure conviction of the applicant.

9. It is next submitted that applicant is in jail in this case since 26.08.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant 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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

11. Having heard learned counsel for the parties and having perused the record, it is evident that in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., she has alleged that she had left her home with her free wish and will and had gone to the house of her aunt and thereafter had gone to the house of the applicant, where she remained for many days and sexual relations between them were also established. The prosecutrix was also testified before the trial court as P.W.-2 and have stated that sexual relations between

her and applicant were not established and the F.I.R. has been lodged by her father on the basis of enmity. In her examination in chief, she appears to have endorsed the recording of the statement under Section 164 Cr.P.C. by the magistrate, however, in the cross examination, she stated that to the police as well as to the magistrate she had given the statement that the applicant had not enticed her away. It is further stated by her in the cross examination done by the applicant's counsel that she was not subjected to rape by the applicant nor any intimidation was given by him (applicant) and it is in this background, it is submitted by learned counsel for the applicant that since the prosecutrix has turned hostile and has not supported allegations as made in the statement recorded under Sections 161 and 164 Cr.P.C., conviction of the applicant would be a remote possibility. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 26.08.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and 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- **Guddu** 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 of this Court on the merits of the case.

Order Date :- 11.10.2023

Anupam S/-