

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12157 of 2023

Applicant :- Mohit

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

Counsel for Applicant :- O.P. Tiwari

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 upto date case diary of the case and investigation in this case is still going on.

2. Heard Shri O.P. Tiwari, 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- **Mohit** for grant of bail, in Case Crime No.292 of 2023, under Sections 376, 354, 506, 120-B I.P.C., Police Station Gangaghat, District Unnao, 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 the applicant is brother-in-law (Jeth) of the prosecutrix/victim and the F.I.R. of this case has been lodged by the victim herself by moving an application under Section 156(3) Cr.P.C. before the magistrate concerned and the allegations levelled therein have been crafted with the aid and advice of a legal professional while no such incident as shown in the F.I.R. has ever occurred.

6. It is also submitted that in fact the informant is having matrimonial discorded relations with her husband (brother of the applicant) and his brother has also instituted a suit for divorce in competent court, which has also been acknowledged by the father of the victim/prosecutrix in his statement given to the investigating officer and the informant was also having a dispute with the applicant and other brothers pertaining to the division of the ancestral properties and it is only on this account to pressurize the applicant and other family members, the

instant F.I.R. on the basis of false, concocted and highly improbable facts have been lodged.

7. Highlighting the statement of the prosecutrix recorded under Section 164 Cr.P.C., before the magistrate, it is vehemently submitted on behalf of the applicant that in this statement prosecutrix had admitted to be having strained relations on account of division of some properties and in her statement recorded under Section 161 Cr.P.C., allegation of only molestation has been levelled, while in her statement recorded under Section 164 Cr.P.C., the story has been improved and apart from molestation, placing of finger in the her private part has also been alleged against the applicant and having regard to the major contradictions occurring in the statement of the prosecutrix vis-a-vis the facts narrated in the F.I.R., it appears that a false narrative has been stated by the prosecutrix in order to pressurize the applicant and his other family members.

8. It is further submitted that prosecutrix has not been subjected to any internal medical examination and thus in support of the allegation levelled by the informant/victim there is only untrustworthy statement of the prosecutrix, which could not be believed. Applicant is in jail in this case since 29.07.2023 and he is not having any criminal history 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.

9. 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.

10. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix at the date and time of the alleged incident is shown to be of 28 years. F.I.R. of this case has been lodged under the orders of magistrate under Section 156(3) Cr.P.C. and it is alleged that the F.I.R. has been drafted with the help of legal professional. Various submissions have been made on behalf of the applicant by referring to the statement of the father of the prosecutrix as well as of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. in order to project that matrimonial dispute is existing between the informant/victim and her husband (brother of the applicant) and also that a suit for divorce has also been filed by her husband. Applicant is in jail in this case since 29.07.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing

adequate conditions.

11. 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**.

12. Let the accused/applicant- **Mohit** 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.

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 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 :- 12.10.2023

Anupam S/-