

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12539 of 2023

Applicant :- Rizwan

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

Counsel for Applicant :- Shitesh Jha, Dr. Shailendra Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned AGA informs that concerned Police Station has informed in writing that opposite party no.2 has been served. In this regard a communication sent by the concerned Police Station pertaining to the service on opposite party no.2 is placed before this Court for the purpose of perusal and the same is taken on record. Perusal of the information sent by the concerned Police Station reflects that opposite party no.2 has been sufficiently served, however, she is not represented.

2. Heard Shri Shitesh Jha, 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- **Rizwan** for grant of bail, in Case Crime No. 0224 of 2023, under Sections 504, 352, 376 IPC and 3(2)(v) SC/ST Act and 5(j)2/6 POCSO Act, Police Station Isanagar, District Kheri, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report has been lodged by the mother of the prosecutrix alleging therein that on 11.6.2023 at about 12.00 in the night the applicant has caught hold of victim and molested her. In the statement of the prosecutrix recorded under Section 161 Cr.P.C. she alleged that she has been raped by the applicant, however, in her statement recorded under Section 164 Cr.P.C. before the Magistrate she has not imputed any allegation with regard to commission of sexual assault, rather she stated that at the relevant point of time a quarrel had taken place between her family members and the family members of the applicant and on that score a false FIR has been lodged against the applicant by her mother.

5. It is also submitted that the prosecutrix has also refused to undergo any medical exponentiation, thus there is no medical evidence in support of sexual assault except the untrustworthy statement of the mother of the victim.

6. It is further submitted that the age of the victim at the relevant point of time, as per her educational credentials was 17 years and 10 months. The applicant is not having any criminal antecedent and he is in jail in this case since 24.06.2023 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.

7. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

8. Having heard learned counsel for the parties and having perused the record, it is reflected from the record that the age of the prosecutrix was 17 years and 10 months at the date and time of the incident. In the FIR no allegation of rape has been levelled against the applicant and in the statement of the victim, recorded under Section 161 Cr.P.C. for the very first time sexual assault was revealed. However, when the statement of the victim was recorded before the Magistrate, under Section 164 Cr.P.C. she categorically stated that a minor quarrel had taken place between her family members and the family members of the applicant and on this score the FIR of this case has been lodged. The applicant is in jail in this case since 24.06.2023 and he is not having any criminal history. His presence may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the applicant- **Rizwan** involved in the aforesaid 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.

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

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

13. 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 :- 19.10.2023

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