

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12432 of 2023

Applicant :- Ashish Kumar

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

Counsel for Applicant :- Raghunath Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Vide order dated 19.10.2023 this Court taking into cognizance that the matter pertaining to the complaint case had issued the notice to the complainant/opposite party no.2 and a report has now been submitted by the Chief Judicial Magistrate, Hardoi specifying therein that the notice issued by this Court has been served. Thus, the service of notice to the complainant/opposite party no.2 is sufficient. However, no one is present on her behalf.

2. Heard Shri Raghunath Prasad, 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- **Ashish Kumar** for grant of bail, in Sessions Case No. 1400 of 2021, under Sections 376(3), 323 I.P.C. and Section 3/4 P.O.C.S.O. Act, Police Station Lonar, District Hardoi, 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 an application moved by the complainant before the Special Court under Section 156(3) Cr.P.C., wherein the allegations have been drafted with the help of a legal professional, has been treated as 'complaint case' by the Special Court and after recording of the evidence of the complainant/informant under Section 200 Cr.P.C. and of prosecutrix under Section 202 Cr.P.C., the applicant has been summoned by the trial Court by passing summoning order dated 12.10.2021.

5. It is vehemently submitted that the allegations, as has been levelled in the application moved under Section 156(3) Cr.P.C. were drafted by a legal professional and a simple incident of 'marpeet' has been given the colour of sexual assault.

Elaborating further, it is submitted that the Special Court has completely given a go by to the mandatory provisions as contained under Section 202 Cr.P.C. and simply on the basis of the statement of complainant and prosecutrix without discussing any *prima facie* case and assessing sufficient grounds the applicant has been summoned.

6. It is further submitted that the applicant in stead of challenging the said summoning order to any higher forum believing in the procedure of adjudication appeared/surrendered before the trial Court on 26.07.2023 and he is in jail since thereafter. He is not having any criminal history. The prosecutrix has also not been subjected to any internal medical examination and, thus, in support of the sexual allegations, there is only the statement of the prosecutrix. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed sexual assault and, therefore, he is not entitled to be released on bail, moreso having regard to the age of the prosecutrix, which is about 15 and half years.

8. Perusal of the record would reveal that an application moved under Section 156(3) Cr.P.C. by the complainant has been treated as 'complaint' and after adopting the procedure as provided under Chapter XV of the Cr.P.C. the applicant has been summoned by the trial Court under Section 204 Cr.P.C. Various submissions have been raised on behalf of the applicant in order to show that the trial Court has failed to appreciate the facts and evidence and without assessing sufficient grounds to proceed has summoned the applicant. However, the summoning order has not been challenged. The internal medical examination of the prosecutrix was not conducted. Some minor injuries are shown to have been sustained by the prosecutrix and the defence of the applicant appears to be that a simple incident of '*marpeet*' has been given the colour of sexual assault.

9. Be that as it may, the finer points of contention may be better appreciated by the trial Court during the course of trial.

10. Having regard to the period of incarceration of the applicant and also the fact that the applicant had surrendered before the trial Court in July, 2023 and the trial is not going to conclude in near future, the facility of may safely be extended to the applicant, moreover, when he is not having any criminal antecedents. The presence of the applicant may be secured

before the trial court by placing adequate conditions.

11. 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- **Ashish Kumar** 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 on the merits of the case.

Order Date :- 6.11.2023

Praveen