

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12592 of 2023

Applicant :- Asarfi Lal

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

Counsel for Applicant :- Dhirendra Kumar Sharma, Ambrish Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit, filed by the State, is taken on record.
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- **Asarfi Lal** for grant of bail in Case Crime No.0535 of 2023, under Sections 376, 323 and 506 IPC lodged at Police Station Deva, District Barabanki, 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. It is further submitted that the prosecutrix is aged about 45 years and, on the basis of prior political enmity, the whole case has been carved out on false and concocted facts. It is further submitted that story, as cooked by the prosecutrix/victim in her statements recorded under Sections 161 and 164 CrPC, could not be believed, more so, there is nothing in the medical examination report of the prosecutrix which may corroborate the oral allegations. Even the pathological reports of the prosecutrix are clean. It is further submitted that there are material contradictions in the statements of the prosecutrix recorded under Sections 161 and 164 CrPC and, it is in the realm of suspicion as to why the prosecutrix has not responded when her daughter had come to the house of the accused-applicant. It is further submitted that the applicant is languishing in jail in this case since 27.06.2023. He is having criminal history of one case in which he is on bail. 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.
5. 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.

6. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix is about 45 years. The alleged occurrence is shown to have occurred on 14.06.2023 at 9.30 p.m., however, the prosecutrix, for the reasons better known to the investigating officer, could only be medically examined on 28.06.2023 and, resultantly the pathological reports of the prosecutrix are clean. No injury etc. has been noticed on her person and, in this background, it is vehemently submitted that in support of allegation of rape there is only allegations contained in the statements of the prosecutrix and the same could only be verified before the trial Court in a full-fledged trial. Criminal history of one case has been adequately explained. The applicant is languishing in jail in this case since 27.06.2023. 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.

7. 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**.

8. Let the accused/applicant-**Asarfi Lal**, 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, along with this bail order, shall file before the trial Court copy of the bail order allegedly passed with regard to Case Crime No.0165 of 2021, under Sections 147, 323, 336, 504 and 506 IPC lodged at Police Station Deva, District Barabanki and, filing of the bail order with regard to above mentioned crime number would be a condition precedent before releasing the applicant on bail.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or

commission of any crime after being released on bail.

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

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

11. 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 16.11.2023

MVS/-