

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12762 of 2023

Applicant :- Raj Kishore

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1.Learned AGA informs that he has procured complete instructions in the matter including upto date case diary and the charge sheet in this case has been submitted.

2. Heard Shri Manoj Kumar Singh, 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- **Raj Kishore** for grant of bail, in Case Crime No. 198 of 2023, under Sections 376D, 452, 323, 504 IPC, Police Station Risiya, District Bahraich, 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 of this case has been lodged by the prosecutrix herself on 10.5.2023 at Police Station Risiya, District Bahraich alleging therein that on 7.5.2023 at about 10-10.30 P.M. when her husband and other family members were not at her house the named accused Chandra Shekhar has entered in her house and in an intoxicating state committed rape on her.

5. Highlighting above, it is vehemently submitted that the applicant was not named by the informant/ victim in the First Information Report and the allegation has been levelled only against the brother of the applicant, namely, Chandra Shekhar. While drawing the attention of this Court to wards the statement of the prosecutrix recorded under Section 161 Cr.P.C. it is submitted that there was no whisper pertaining to any role of the applicant, however, in her statement recorded under Section 164 Cr.P.C. after 14 days of recording of her statement under Section 161 Cr.P.C., she for the very first time has imputed allegation of rape against the applicant along with the named

accused- Chandra Shekar.

6. The attention of this Court has also been drawn on the part of the statement of the prosecutrix recorded under Section 161 Cr.P.C. wherein she stated that a criminal case was lodged from the applicant's side against her husband. It is submitted that in fact on the same day i.e. 10.5.2023 a report was lodged by the mother of the applicant against the father-in-law of the victim at the same Police Station with regard to the incident occurred on the same day at 10-1030 P.M. on 7.5.2023 with regard to the commission of rape by the father-in-law of the victim with the mother of the applicant. Thus this case is counter blast of the same incident.

7. It is vehemently submitted that the applicant is in jail in this case since 24.07.2023 and he is not having any criminal history. Charge sheet in this case has already been submitted 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.

8. Learned A.G.A. on the other hand submits that the applicant is accused of committing heinous offence, therefore, he is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that the applicant was not named in the FIR nor in the statement of the prosecutrix recorded under Section 161 Cr.P.C. The name of the applicant has surfaced in the statement of the prosecutrix recorded under Section 164 Cr.P.C. that too after many days of recording of her statement under Section 161 Cr.P.C. The age of the prosecutrix is about 28 years and she was also having 3 children. An FIR is also shown to have been lodged by the mother of the applicant against the father-in-law of the victim on the same day with regard to the same incident and it is submitted in this background that the instant FIR is the counter blast of the earlier FIR lodged by the mother of the applicant. The applicant is in jail in this case since 24.7.2023 and he is not having any criminal history. Charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the applicant- **Raj Kishore** involved in the aforesaid case be released on bail on 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.

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

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

14. 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 :- 31.10.2023

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