

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12830 of 2023

Applicant :- Munna

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

Counsel for Applicant :- Ajeet Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per communication sent by the Chief Judicial Magistrate, Hardoi, opposite party no.2 has been sufficiently served, however, he is not represented.
2. Heard Shri Ajeet 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- **Munna** for grant of bail, in Case Crime No.642 of 2022, under Sections 376-DA, 372, 373, 344 I.P.C., Section 5L/6 of the P.O.C.S.O. Act and 3/4/5 of the Immoral Traffic (Prevention) Act, 1956, Police Station Atrauli, 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 he has not committed any offence as claimed by the prosecution.
5. It is further submitted that though various allegations were levelled in the F.I.R. as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C. and in the statement of the prosecutrix recorded under Section 164 Cr.P.C., no allegation of rape was levelled against the applicant.
6. It is vehemently submitted on behalf of the applicant that in case of contradiction between the statement recorded under Sections 161 and 164 Cr.P.C., in all probability the statement of the prosecutrix recorded under Section 164 Cr.P.C. is to be given precedence as the same has been recorded before a magistrate in a clean environment, however, the investigating officer without there being any basis has submitted charge sheet and now the prosecutrix has been testified before the trial court

as P.W.-1, wherein she has narrated the true story in her cross examination to the tune that the accused persons are not known to her and their names were known to her as was informed by the media persons and one Abhishek and it is on that basis she has stated the name of the accused persons, however, they are not known to her and the accused persons present before the court (trial court) did not subject her to sexual assault nor they forced her to adopt flesh trade and they never intimidated her and she had given her statement recorded under Section 164 Cr.P.C. on intimidation given by the police personnel.

7. Highlighting the statements of the prosecutrix, it is submitted that since the prosecutrix has chosen not to support the version of the prosecution in her cross examination, conviction of the applicant before the trial court would be a remote possibility. Identically placed co-accused persons of the alleged crime, namely, Somil and Sitesh have been released on bail by the Coordinate Bench of this Court, vide orders dated 30.11.2023 and 28.11.2023 passed in Criminal Misc. Bail Application Nos.12094 of 2023 and 12546 of 2023, respectively.

8. It is next submitted that applicant is in jail in this case since 15.11.2022 and at the time of involvement of the applicant in the instant case, he was not having any criminal history and after slapping of the instant case, one case with regard to Gangster Act has also been slapped against him, charge-sheet in this case has already been submitted 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 though the allegations of sexual assault and other heinous offences have been levelled by the prosecutrix in her statement recorded before the magistrate under Section 164 Cr.P.C. and before the investigating officer under Section 161 Cr.P.C. and even in her chief examination before the trial court, when she was testified before the trial court as P.W.-1 she has supported the allegations, however, during the course of her cross examination, she became hostile and stated that the accused persons are not known to her and their names were told by media persons and one Abhishek and she also categorically denied to have been subjected to rape by

the applicant or any other accused person and also that no intimidation or allurements was given by her to adopt flesh trade by the applicant or by anyone. Identically placed co-accused persons of the alleged crime, namely, Somil and Sitesh have been released on bail by the Coordinate Bench of this Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 15.11.2022 and 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- **Munna** 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 :- 7.12.2023

Anupam S/-