

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12991 of 2023

Applicant :- Dinesh

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

Counsel for Applicant :- Bal Krishna Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Supplementary affidavit filed on behalf of the applicant is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.
3. Heard Shri Bal Krishna Shukla, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Dinesh** for grant of bail, in Case Crime No.783 of 2022, under Sections 323, 376-D, 511 I.P.C., Police Station Khairighat, District Bahraich, during trial.
5. 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.
6. It is further submitted that on 21.10.2022, about one month before lodging of the F.I.R., the brother-in-law of applicant namely Jagroop has executed a sale deed of an agricultural land of the value of Rs.1.41 lakh in favour of the informant/prosecutrix, however, it was orally agreed between the parties that the sale deed would be executed by showing consideration of Rs.20,000/- and rest of the money would be given either in cash at the time of execution of sale deed or thereafter, however, despite insistence no money was paid to the applicant by the informant/victim or by her husband and when the applicant pressurize them to pay the remaining amount, as agreed between them, this false F.I.R. has been lodged.

7. It is further submitted that there are material contradictions in the contents of the F.I.R., which has been lodged by none other than the victim herself vis-a-vis her statements recorded under Sections 161 and 164 Cr.P.C. Elaborating further, it is submitted that in the F.I.R. as well as in the statement of the victim recorded under Section 161 Cr.P.C. allegations pertaining to molestation has been levelled, however, in the statement of the victim recorded under Section 164 Cr.P.C., allegation of attempt to commit rape has been levelled, however, so far as the applicant is concerned, there is no mention about penetration, therefore, even if the allegations as levelled by the prosecutrix, which could not be believed, are taken on its face, the case of only molestation or at the most of attempt to rape may surface. It is also submitted that the story as cooked up by the prosecutrix as is reflected through the contents of the F.I.R. and the allegations as levelled in her statement recorded under Sections 161 and 164 Cr.P.C. could not be believed.

8. It is next submitted that applicant is in jail in this case since 17.09.2023 and the criminal history of two cases pertaining to minor penal offences has been explained in supplementary affidavit filed today. 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. Identically placed co-accused person of the alleged crime, namely, Jagroop has been released on bail by this Court vide order dated 03.10.2023 passed in Criminal Misc. Bail Application No.11127 of 2023.

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 before lodging of the F.I.R. of the instant case on 26.11.2022, the brother-in-law of applicant namely Jagroop had executed a sale deed in favour of the informant/prosecutrix on 21.10.2022 and the consideration for the sale deed has been shown as Rs.20,000/- while in the sale deed itself at page no.6 of the sale deed (at page 19 of the bail application), valuation as per circle rate of the land has been shown as Rs.1.41 lakh. The defence of the applicant appears to be that to save the stamp duty, consideration of Rs.20,000/- was mentioned while relying on para no.6 of the bail application, it is stated on behalf of the applicant that the land was in fact agreed to be sold in lieu of Rs.2 lakhs and the

remaining amount was agreed to be given afterwards and when the applicant insisted for payment of remaining consideration, this false F.I.R. has been slapped on him. Identically placed co-accused person of the alleged crime, namely, Jagroop has been released on bail by this Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 17.09.2023. Criminal history of the applicant has been adequately explained. 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- **Dinesh** 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 :- 8.11.2023

Anupam S/-