

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12995 of 2023

Applicant :- Surya Prakash Gupta @ Surya Gupta And Another
Opposite Party :- State Of U.P., Thru. Prin. Secy. Home Deptt., Civil Secrty., Lko.

Counsel for Applicant :- Shadab Waheed, Ashok Kumar Singh
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary.
2. Heard learned counsel for the accused-applicants as well as learned counsel representing the State and perused the record.
3. This bail application has been moved by the accused/applicants namely **Surya Prakash Gupta @ Surya Gupta** and **Ankit Gupta @ Golu Gupta** for grant of bail, in Case Crime No.694 of 2023, under Sections 376-D, 504, 506 I.P.C., Police Station Kotwali Nagar, District Barabanki, during trial.
4. Learned counsel for the accused-applicants while pressing the bail application submits that the applicants have been falsely implicated in this case and they have not committed any offence as claimed by the prosecution.
5. It is further submitted that F.I.R. of this case has been lodged by none other than the prosecutrix herself wherein allegations of commission of sexual assault has been levelled running over a period of time and the same has also been corroborated by the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. The prosecutrix is aged about 25 years and at the relevant point of time, she was major and if statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. are read conjointly, it will emerge that she was a consenting party. Her statement was recorded before the trial court as P.W.-1, wherein, though she has not been declared hostile, but has completely disowned her statements recorded under Sections 161 and 164 Cr.P.C. and categorically stated that statement under Section 161 Cr.P.C. recorded by the investigating officer was not given by her and statement recorded under Section 164 Cr.P.C. has been given under the pressure of police personnel

and in fact the applicants and other accused person had not committed rape with her nor she was made captive nor any abortion was performed and she was also not sexually assaulted by anyone.

6. It is further submitted that since the prosecutrix has chosen not to support the version of the prosecution, the chances of conviction of the applicant before the trial court are remote possibility. It is also submitted that the applicant no.1 is in jail in this case since 27.07.2023 and the applicant no.2 is in jail in this case since 18.07.2023 and they are not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail the applicants may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A. submits that in the instructions forwarded by the concerned police station, it has been mentioned that the prosecutrix was being pressurized to become hostile and the applicants were absconder as they were not available during the course of investigation and belatedly the applicant no.1 had surrendered while applicant no.2 was arrested by the police and having regard to the material/evidence available against the applicants, they are not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R. as well as in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. allegations of rape as well as causing abortion and other hostilities committed by the applicant have been levelled, however, the prosecutrix has been testified before the trial court as P.W.-1, wherein she has disowned her statement recorded under Sections 161 and 164 Cr.P.C. and had categorically stated that nothing as stated by her in her statement recorded under Section 161 Cr.P.C. had happened, by stating that she has not given this statement to the investigating officer and with regard to the statement recorded under Section 164 Cr.P.C., she stated that the same was given while she was pressurized by the police personnel. It is in this background, vehemently submitted that it would be difficult for the prosecution to secure conviction of the applicants before the trial court. The applicant no.1 is in jail in this case since 27.07.2023 and the applicant no.2 is in jail in this case since 18.07.2023 and they are not having any criminal history. Charge sheet in this case has already been filed. The presence of the applicants could be secured before the trial court by placing adequate conditions.

9. 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 applicants have made out a case for bail. The bail application is thus **allowed**.

10. Let the accused/applicants namely **Surya Prakash Gupta @ Surya Gupta** and **Ankit Gupta @ Golu Gupta** involved in above-mentioned case, be released on bail on their furnishing personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

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

(ii) The applicants shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicants shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

13. 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 :- 3.11.2023

Anupam S/-