

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13051 of 2023

Applicant :- Ram Narayan

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

Counsel for Applicant :- Nisha Srivastava

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 of the case.

2. Heard Ms. Nisha Srivastava, 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- **Ram Narayan** for grant of bail, in Case Crime No.390 of 2023, under Sections 376, 506 I.P.C., Police Station Asandara, 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.

5. It is further submitted that F.I.R. of this case has been lodged by the prosecutrix herself alleging therein that in the night of 2nd September, 2023 about 09:00pm, she had gone in the field to ease herself, where she was overpowered by the accused applicant, who committed rape on her and when she attempted to raise alarm, he by intimidating her with a knife asked her to keep silence and thereafter she came to her house and informed her husband about the incident. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has stated about the sexual assault committed by the applicant.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that there are major contradictions in the statements of the prosecutrix vis-a-vis the incident as narrated in the F.I.R. as well as between the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. Elaborating further, it is submitted that in the F.I.R., which has been

registered on written application moved by the prosecutrix, it is stated that she, after commission of sexual assault, had come to her home and had stated about the incident to her husband while her husband in his statement recorded under Section 161 Cr.P.C. claimed to have gone to the field, where the incident had occurred and also claimed to have seen the applicant running away from the scene of crime.

7. It is further elaborated that in the F.I.R. intimidation is shown to have been given with a knife by the applicant, however, the prosecutrix in her statement recorded under Section 161 Cr.P.C. in response to a question posed by the investigating officer had stated that the fact of intimidation given by the applicant with knife was wrongly written in the application while she was orally intimidated by the applicant. Attention of this Court in this regard has been drawn towards the statement of the husband of the prosecutrix as well as to one other prosecution witness namely Dilwasa Devi, who has stated that it was told by the prosecutrix that she was intimidated by the applicant, who was having a knife in his hand.

8. It is further submitted that the prosecutrix is shown to have been medically examined on 04.09.2023, after 48 hours of the incident, and even any scratch has not been found on her body and her pathological report is also clean. Thus, in support of oral allegation, there is only and only untrustworthy statements of the prosecutrix. The age of the prosecutrix is 35 years and she is a married lady and also having two children. The whole story as has been cooked up is in the background of the enmity, which is existing between the applicant and the family of the prosecutrix with regard to division of property.

9. It is next submitted that applicant is in jail in this case since 07.09.2023 and he is not having any criminal history, 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.

10. 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.

11. Having heard learned counsel for the parties and having perused the record, learned counsel for the applicant has drawn attention of this Court towards many contradictions emerging in the story as stated in the F.I.R. as well as in the statement of the

prosecutrix recorded under Sections 161 and 164 Cr.P.C. It is also shown that medical report of the prosecutrix is clean. The contradictions as have been highlighted by learned counsel for the applicant may be better appreciated by the trial court having regard to the settled principles of appreciation of evidence. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 07.09.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. 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**.

13. Let the accused/applicant- **Ram Narayan** 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.

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

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

16. 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 :- 6.11.2023

Anupam S/-