

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13019 of 2023

Applicant :- Suraj Singh

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

Counsel for Applicant :- J.B. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Mohd. Waris Farooqui, learned Advocate has filed his 'Vakalatnama' along with short counter affidavit on behalf of the complainant/victim, the same 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 J.B. Singh, learned counsel for the accused-applicant as well as learned A.G.A. for the State, Shri Mo. Waris Farooqui, learned counsel for the complainant/victim and perused the record.
4. This bail application has been moved by the accused/applicant- **Suraj Singh** for grant of bail, in Case Crime No.655 of 2023, under Section 376 I.P.C., Police Station Kotwali Nagar, District Barabanki, 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 in the F.I.R. as well as in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. allegation of sexual assault has been levelled against the applicant along with the allegations that the prosecutrix/victim was working as house-maid and the applicant was having a bad eye on her and on this pretext, she left his house, however, on the relevant day, he called her through Mamta, who at that point of time was working as house-maid of the applicant and when she arrived at his house and inquired as to how the vulgar picture is displaying on her mobile phone, he overpowered her and committed sexual

assault.

7. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the allegations as levelled by the prosecutrix are not supported by any medical evidence as no injury or abnormality has been found in the medical report of the prosecutrix and her pathological report is also clean.

8. It is further submitted that the prosecutrix/victim is aged about 26 years and she is a married lady and also having children and admittedly she was working as house-maid and there was a dispute with regard to the payment of her salary and it is on this account, F.I.R. has been lodged. While referring to the short counter affidavit filed by the complainant/victim, it is submitted that correct facts have been stated by the informant in her affidavit.

9. It is next submitted that applicant is in jail in this case since 06.06.2023 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. Shri Mohd. Waris Farooqui, learned counsel for the complainant/victim while referring to the short counter affidavit filed by him today submits that it is on account of some misunderstanding under the state of anger, the F.I.R. of this case has been lodged.

12. It is also submitted by the learned counsel for the complainant/informant that in this case F.I.R. has been lodged as the prosecutrix was highly annoyed with the applicant and now she realizes that on the basis of insufficient facts the F.I.R. was lodged. While drawing attention of this Court towards short counter affidavit filed by the prosecutrix/victim, it is submitted that she has also disowned her statements recorded under Sections 161 and 164 Cr.P.C. and, he, under instructions, is informing this Court that the prosecutrix is not having any objection if the facility of bail is extended to the applicant.

13. 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 statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. and she has categorically levelled allegations of sexual assault against the applicant. The age of the prosecutrix is 26 years and the medical report of the prosecutrix is clean as no injury or abnormality has been found. Short counter affidavit has been filed before this Court by the prosecutrix/victim/informant stating that the F.I.R. of this case was lodged in a state of anger by her. She has also denied the statements given by her under Sections 161 and 164 Cr.P.C. The area of appreciation of evidence is clearly demarcated and is in the realm of the trial court, thus it would not be fair for this Court to comment anything on the evidentiary value of the facts stated by the prosecutrix/informant in the short counter affidavit filed by her, however, it is reflected that the prosecutrix is not willing to keep the applicant in jail. The applicant is languishing in jail since 06.06.2023. The facts mentioned above, in the considered opinion of this Court, are sufficient enough to extend the facility of bail to the applicant, more so, when he is not having any previous criminal antecedents. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 06.06.2023. The presence of the applicant could be secured before the trial court by placing adequate conditions.

14. 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**.

15. Let the accused/applicant- **Suraj Singh** 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.

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

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

18. 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/MVS Chauhan