

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13109 of 2023

Applicant :- Chandra Shekhar

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed on behalf of the State is taken on record.

2 Heard Shri Manoj 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- **Chandra Shekhar** for grant of bail, in Case Crime No. 198 of 2023, under Sections 376-D, 452, 323 and 504 I.P.C., Police Station Risiya, District Bahraich, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the victim herself on 10.05.2023 at about 16:27 hours at Police Station Risiya, District Bahraich against the applicant alleging commission of rape by him on 07.05.2023 at 10-10:30 pm. when her husband was not present at her home.

5. It is further submitted that though, in the first information report lodged by the victim herself, there was no whisper pertaining to the commission of sexual assault by co-accused Raj Kishore, however, her name was introduced in the statement of the prosecutrix recorded under Section 164 Cr.P.C., while even in her statement recorded under Section 161 Cr.P.C. all the allegations were against the applicant.

6. It is vehemently submitted that the story, as cooked up by the prosecutrix is highly concocted, fabricated and could not be believed being improbable. Elaborating further, it is submitted that on the same day an F.I.R. was lodged by the mother of the applicant against the father-in-law of the victim and that F.I.R. was lodged in the same police station on 10.05.2023 at 17:26 hours and the incident in the F.I.R. is also shown to have

occurred on 07.05.2023 at 10:30 pm. and, thus, the instant F.I.R. has been lodged, in connivance with the police, to carve out the defence of the F.I.R. lodged by the mother of the applicant.

7. It is further submitted that the medical report of the prosecutrix/victim is clean and no injury, etc. or any abnormality has been found therein. The age of the prosecutrix is 28 years and identically placed co-accused, namely, Raj Kishore has been granted bail by this Court, vide order dated 31.10.2023 passed in Criminal Misc. Bail Application No. 12762 of 2023. Applicant is languishing in jail in this case since 30.06.2023 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand submits that the role of the instant applicant is distinguishable from the role of the co-accused Raj Kishore, as he was not named in the F.I.R. nor in the statement of the prosecutrix recorded under Section 161 Cr.P.C., while the statement of the prosecutrix is consistent against the applicant right from lodging of the F.I.R. till recording of her statement under Section 164 Cr.P.C., thus, he is not entitled to be released on bail.

9. Perusal of the record would reveal that in the F.I.R. as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C., the allegation of commission of rape has been levelled against the applicant alone, however, in her statement recorded under Section 164 Cr.P.C., she has introduced the name of co-accused Raj Kishore, who is also shown accused of commission of rape. Thus, having regard to the statement of the prosecutrix recorded under Section 164 Cr.P.C., the role of the instant applicant is at par with co-accused Raj Kishore. It is also shown that on the same day when the F.I.R. of this case was lodged, another F.I.R. was lodged by the mother of the applicant against the father-in-law of the victim of the instant case with regard to the incident of rape occurred with her on 07.05.2023 at 10:30 pm. and the same time has been shown in the F.I.R. of the instant case. Admittedly there is no abnormality in the medical report of the victim/prosecutrix. She is aged about 28 years. Applicant is languishing in jail in this case since 30.06.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Chandra Shekhar** 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.

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

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

14. 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 on the merits of the case.

Order Date :- 28.11.2023

Praveen