

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 13450 of 2023

**Applicant :-** Ram Kenwal And Another

**Opposite Party :-** State Of U.P Thru. Prin. Secy. Home Deptt. Lko. And 3 Others

**Counsel for Applicant :-** Ashish Raman Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mohd. Faiz Alam Khan,J.**

1. It is informed by learned A.G.A. that the informant of this case has been informed and in this regard a communication sent by the Police Station Kotwali Dehat, District Bahraich has been placed for perusal and 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.

3. Heard Shri Ashish Raman Mishra, learned counsel for the accused-applicants as well as learned counsel representing the State and perused the record.

4. This bail application has been moved by the accused/applicants namely **Ram Kenwal** and **Mast Ram** for grant of bail, in Case Crime No.71 of 2023, under Sections 376(DB) I.P.C. and Section 5(g)/6 of the P.O.C.S.O. Act, Police Station Kotwali Dehat, District Bahraich, during trial.

5. 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.

6. It is further submitted that F.I.R. of this case has been lodged by the mother of the prosecutrix, wherein the allegations of only molestation has been levelled against co-accused Shyamu Yadav @ Ramu and even in the statement of the informant recorded under Section 161 Cr.P.C., all allegations with regard to the molestation has been levelled against co-accused Shyamu Yadav @ Ramu.

7. It is also submitted that even in the statement of the prosecutrix recorded under Section 161 Cr.P.C., she has not alleged anything against the applicant and the allegations with regard to molestation only has been levelled against co-accused Shyamu Yadav @ Ramu, however, in her statement recorded

under Section 164 Cr.P.C., she has assigned the role of catching hold to the applicants while the role of committing rape has been assigned to the co-accused Shyamu Yadav @ Ramu.

8. It is vehemently submitted on behalf of the applicants that the prosecutrix was medically examined and no injury of any kind or any other abnormality has been found in her medical examination and even her hymen was found intact, which belies the story as cooked up by the prosecutrix. It is also submitted that it was admitted to the informant that the applicants were present in the house at the relevant point of time and even then no allegation was levelled in the F.I.R. or in the statement of the prosecutrix/victim recorded under Section 161 Cr.P.C. and it is only on account of some improvement subsequently the applicants have been dragged into this case.

9. It is further submitted that the main accused of the crime namely Shyamu Yadav has been granted bail vide order dated 12.07.2023 passed by a Coordinate Bench of this Court in Criminal Misc. Bail Application No.8730 of 2023.

10. It is also submitted that the applicants are in jail in this case since 27.09.2023 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.

11. Learned A.G.A., however, opposes the prayer of bail of the applicants on the ground that the applicants are accused of committing an heinous offence with a girl of very tender age and having regard to the material/evidence available against the applicants, they are not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicants.

12. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix is about 11-12 years. The allegations of only molestation was levelled in the F.I.R. as well as in the statement of the prosecutrix and informant recorded under Section 161 Cr.P.C. and there was no whisper with regard to the sexual assault or involvement of the applicants, however, in the statement of the victim recorded under Section 164 Cr.P.C. for the very first time, name of the applicants have surfaced and role of only catching hold has been assigned to the applicants while the role of committing rape has been assigned to the co-accused Shyamu Yadav @ Ramu and he (Shyamu Yadav @ Ramu) has been granted bail vide order dated 12.07.2023 passed by a

Coordinate Bench of this Court. Nothing has been brought in the knowledge of this Court, which may suggest that bail order, whereby the main accused Shyamu Yadav @ Ramu was granted bail, has been challenged at any higher forum or has been cancelled by the same Court. Hymen of the prosecutrix has also been found intact. The applicants are in jail in this case since 27.09.2023 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.

13. 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**.

14. Let the accused/applicants namely **Ram Kenwal** and **Mast Ram** 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.

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

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

17. 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 :- 9.11.2023**  
Anupam S/-