

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13783 of 2023

Applicant :- Guddu Alias Guddu Chowkidar

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

Counsel for Applicant :- Mohd. Waris Farooqui

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.
2. Heard Shri Mohd. Waris Farooqui, 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- **Guddu Alias Guddu Chowkidar** for grant of bail, in Complaint No.559/21/23, under Sections 376, 506 I.P.C., Police Station Pachpedwa, District Balrampur, 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 complaint in this case has been lodged by the victim herself, who is aged about 30 years and the allegations levelled therein are concocted, fabricated and could not be believed on the touchstone of probability and the manner in which the incident is shown to have occurred, could not be believed by any prudent person.
6. While drawing attention of this Court towards the complaint as well as the statement of the prosecutrix recorded under Section 200 Cr.P.C., it is vehemently submitted on behalf of the applicant that it is admitted to the prosecutrix that her husband is a witness in a case instituted by the applicant and it appears that the husband of the prosecutrix has been won over by the accused persons and it is on account of their instigation this false complaint has been lodged.

7. It is further submitted that commission of sexual assault with a lady of having pregnancy of 9 months could not be believed and the magistrate, who has summoned the applicant, has completely given go by to the procedure as prescribed under Section 202 Cr.P.C. as the inquiry contemplated therein has not been done and it appears that only on the basis of statement of the prosecutrix recorded under Section 200 Cr.P.C., the applicant has been summoned to face trial in one of the most heinous offence of the Indian Penal Code.

8. It is also submitted that apart from the prosecutrix, there is no witness, who claimed to have seen the incident and the explanation given by the prosecutrix with regard to not undergoing any medical examination may also not be believed, thus in support of the allegation of sexual assault, there is only and only untruthful statement of the prosecutrix. Thus there was no sufficient ground available for summoning of the applicant.

9. It is next submitted that applicant is in jail in this case since 21.07.2023 and he is not having any criminal history 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, it is evident that on filing a complaint by the prosecutrix herself and after recording her statement under Section 200 Cr.P.c. as well as of her witnesses under Section 202 Cr.P.C., finding sufficient grounds, the magistrate has summoned the applicant to face trial under Sections 376, 506 I.P.C. Various submissions have been raised on behalf of the applicant in order to show that the incident as shown to have occurred is highly improbable and could not be believed by any prudent person. Admittedly there is no medical evidence in support of the oral allegations and apart from the prosecutrix, who is aged about 30 years, there is no witness, who claimed to have seen the incident. It is also submitted on behalf of the applicant that the exercise as contemplated under Section 202 Cr.P.C. has not been adhered by the concerned magistrate while summoning the applicant to face trial for committing offence under Section 376 I.P.C. Applicant is in jail in this case since 21.07.2023 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- **Guddu Alias Guddu Chowkidar** 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 :- 28.11.2023

Anupam S/-