Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13815 of 2023

Applicant :- Dinesh Yadav
Opposite Party :- State Of U.P. Thru. Prin. Secy., Home, Lucknow
Counsel for Applicant :- Lalu Prasad Bhatt
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. It is informed by learned A.G.A. that he has procured complete instructions in the matter including up-to-date case diary and charge sheet in this case has also been submitted.

2. Heard 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- **Dinesh Yadav** for grant of bail, in Case Crime No. 435 of 2023, under Sections 457, 354, 504, 506 and 376 I.P.C., Police Station Hardi, 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. In the first information report, which has been lodged by the prosecutrix herself, there is no allegation of commission of rape and the allegations are confined to molestation and outraging the modesty and even in her statement recorded under Section 161 Cr.P.C., there is no whisper about the commission of rape. However, after many days of recording of the statement under Section 161 Cr.P.C, the statement of the prosecutrix was recorded under Section 164 Cr.P.C, wherein commission of rape has been introduced for the very first time and the same has been levelled on account of prior enmity under the influence of her family members.

5. It is further submitted that the statement given by the victim/prosecutrix under Section 164 Cr.P.C., wherein for the very first time the factum of commission of rape has been introduced, may not be believed due to inherent weaknesses, moreover, the prosecutrix is aged about 25 years. She is a married lady and the applicant has been dragged into this case on account of prior enmity. Prosecutrix has also refused to undergo any medical examination.

6. It is next submitted that applicant is languishing in jail in this case since 24.09.2023 and he is 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 he may flee from the course of law or may otherwise misuse the liberty.

7. 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, therefore, he is not entitled to be released on bail.

8. Perusal of the record would reveal that the age of the prosecutrix is shown to be of 25 years, thus, she was major. The first information report has been lodged by the victim herself, wherein there is no mention of commission of rape and the allegations are only with regard to the 'molestation/outraging the modesty'. In the statement recorded under Section 161 Cr.P.C., she also did not state anything about the commission of rape and it is only her statement under Section 164 Cr.P.C. where she for the very first time introduced the factum of rape. She also refused to undergo any medical examination. Applicant is languishing in jail in this case since 24.09.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the accused/applicant- **Dinesh Yadav** 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.

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

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

13. 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 :- 23.11.2023
Praveen

Digitally signed by :-
SHRAVAN KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench