

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13888 of 2023

Applicant :- Riyaz

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

Counsel for Applicant :- Dharm Trivedi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. It is informed by learned AGA that as per communication sent by the P.S., Singhai, Lakhimpur Kheri, the opposite party no.2 has been sufficiently served, however, she is not represented. The information received by learned AGA has been placed before this Court for perusal and the same is taken on record.

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- **Riyaz** for grant of bail, in Case Crime No.309 of 2022, under Sections 376DA, 394, 506 I.P.C. & 5g/6 of the P.O.C.S.O. Act, Police Station- Singhai, District Lakhimpur Kheri, 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 in the F.I.R., which has been lodged by the prosecutrix herself, the applicant was not named and his complicity has surfaced later on as he is claimed to have been identified by the prosecutrix and allegations have been levelled therein to the tune that the applicant along with three accused persons has sexually assaulted the prosecutrix and also made a video of the sexual activity and also looted some money and jewellery from her. The incident is reported to have occurred in April, 2021 while the F.I.R. has been lodged on 07.11.2021.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the F.I.R. of this case has been lodged with considerable delay and the same has not been explained properly. It is further submitted that in the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., allegations have been levelled against the applicant and other

accused persons of committing sexual assault, however, the allegations levelled in the statements of the prosecutrix have not found corroboration by the medical evidence as no abnormality or injury of any kind has been noticed in the medical examination.

7. It is further submitted that statement of the prosecutrix has been recorded before the trial court as P.W.-1, wherein though in her chief examination she has supported the prosecution version of the incident, however, under cross examination, she has become hostile and have categorically stated that she was not met with any person in the jungle nor anything illegal was committed by the applicant on her. She also disowned her statement recorded under Sections 161 and 164 Cr.P.C. It is also submitted that since the prosecutrix has not stated anything against the applicant before the trial court, conviction of the applicant would be a remote possibility.

8. It is next submitted that applicant is in jail in this case since 30.09.2022. Criminal history of two cases have been explained in para no. 27 of the bail application and in one of these cases, the applicant has been released on bail and with regard to second case pertaining to Section 307 I.P.C., bail application is pending before this Court and on the basis of instant case another case pertaining to Gangster Act has been slapped against the applicant. 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. Identically placed co-accused person Rafiulla and Jasveer Singh have been granted bail by this Court vide orders dated 17.10.2023 and 27.10.2023 passed in Criminal Misc. Bail Application Nos. 5105 of 2023 and 8883 of 2023, respectively. Therefore, the applicant claims parity.

9. 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, including the claim of parity with co-accused Rafiulla and Jasveer Singh.

10. Having heard learned counsel for the parties and having perused the record, it is evident that in the F.I.R. lodged by the prosecutrix, the applicant was not named, however, he has been subsequently identified by the prosecutrix as one of the person, who has committed sexual assault on her. The prosecutrix has been testified before the trial court as prosecution witness. In her cross examination, she has become hostile and clearly stated

that she was not subjected to rape by the applicant or any accused person and in fact no incident has occurred with her on that day. She has also disowned her statement recorded under Sections 161 and 164 Cr.P.C. and it is vehemently submitted by learned counsel for the applicant that since the prosecutrix has become hostile, chances of conviction of the applicant are remote. Criminal history of two cases have been adequately explained. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 30.09.2022. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. 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**.

12. Let the accused/applicant- **Riyaz** 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.

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

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

15. 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
Shravan