

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14052 of 2023

Applicant :- Ramu

Opposite Party :- The State Of U.P. Thru. Prin. Secy. Civil Sectr. Lko.

Counsel for Applicant :- Sagar Singh, Shri Ram Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed today by learned counsel for the applicant is taken on record.
2. Learned A.G.A. informs that he has procured complete instructions in the matter including up-to-date case diary.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Ramu** for grant of bail, in Case Crime No. 363 of 2022, under Sections 376, 504 and 506 I.P.C., Police Station Madhoganj, District Hardoi, during trial.
5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and only on account of previous enmity, a simple incident of '*marpeet*' has been given the colour of sexual assault and the allegations levelled in the F.I.R. as well as in the statements of the prosecution witnesses including of the prosecutrix are highly improbable, concocted and could not be believed.
6. It is further submitted that F.I.R. of the instant case has been lodged by the son of the victim on 29.08.2022 with the allegations that on 29.08.2022 at about 5:00 pm. applicant had overpowered the mother of the informant, aged about 50 years and when she raised an alarm, the informant arrived there, on which the applicant fled away from the scene after intimidating and abusing him.
7. It is vehemently submitted that the first information report has been lodged on the basis of a written information given by the informant in the concerned police station and in presence of the prosecutrix in the police station, as she was also sent for

external medical examination and, thus, in the first information report, there was no whisper about the commission of rape by the applicant and all the allegations with regard to the committing sexual assault/rape has been carved out subsequently in order to harass the applicant.

8. It is also submitted that a minor altercation had taken place between the family members of the informant and applicant whereby the applicant had also sustained two minor injuries and the medical examination of the prosecutrix is placed at Page No. 17 of the paper book, while the allegation of sexual assault are not finding any corroboration from any medical evidence as on 01.09.2022 the prosecutrix was internally medically examined and no abnormality or injury of any kind has been found on her person. It is also highlighted that the prosecutrix was also medically examined with regard to any external injury on 29.08.2022 itself and in that medical examination also no injury of any kind has been found on her person and since she was subjected to only external examination is itself shows that there was no element of sexual assault in this case and the same has been carved out subsequently.

9. It is next submitted that applicant is languishing in jail in this case since 31.08.2022 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.

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 with a women of 50 years of age and, therefore, he is not entitled to be released on bail.

11. Perusal of the record in the background of the submissions advanced by learned counsel for the parties would reveal that age of the applicant is about 37 years while the age of the prosecutrix is about 50 years. The F.I.R. has been lodged with promptness i.e. on the same day when the alleged incident had occurred, however, in the first information report, there is no mention of commission of rape or sexual assault. The prosecutrix was also medically examined the same day with regard to any external injury. However, no injury of any kind or any abnormality has been found in that external examination. The applicant is shown to have sustained two minor injuries and the defence of the applicant is that a minor quarrel/altercation wherein the applicant had sustained two injuries have been given the colour of rape could not be believed by any prudent person, as the age of the prosecutrix is 50 years and the age of the applicant is 37 years. Applicant is languishing in jail in this

case since 31.08.2022 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.

12. 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- **Ramu** 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 on the merits of the case.

Order Date :- 6.12.2023

Praveen