

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 13958 of 2023

Applicant :- Noor Mohammad @ Raj

Opposite Party :- State Of U.P. Thru. Secy. Home, Lucknow

Counsel for Applicant :- Narendra Gupta, Ganga Shanker Gupta

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 in the matter including upto date case diary of the case.

2. Heard Shri Narendra Gupta, 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- **Noor Mohammad @ Raj** for grant of bail, in Case Crime No.126 of 2023, under Sections 366, 376 I.P.C., Police Station Rahimabad, District Lucknow, 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 F.I.R. of this case has been lodged by the father of the prosecutrix, wherein it is alleged that his daughter aged about 18 years had left her home on 16.06.2023 at about 04:00pm, however, on 20.07.2023, the prosecutrix was recovered and her statement under Section 161 Cr.P.C. was recorded, wherein she stated to have left her home as she was being scolded by her mother and on this score, she asked the applicant to take her and with her free wish and volition she had gone with him to Mumbai, where she was living with the applicant in a rented accommodation and when a message was conveyed by her parents, she returned.

6. It is also submitted that in her statement recorded under Section 164 Cr.P.C., the prosecutrix has stated initially that she had accompanied the applicant as some obscene photographs of her were clicked by him while they were talking on video call and they had gone to Mumbai, where they started living in a rented accommodation and after one month, a message was

conveyed by her father requesting them to return to their home. She further stated that nothing wrong has been done by the applicant with her, however, in later part of her statement she had alleged sexual intercourse committed by the applicant without her consent.

7. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the first informant of the case is the father of the prosecutrix and in the F.I.R. lodged by him, it is stated that it was the prosecutrix, who had left her home and in her statement recorded under Section 161 Cr.P.C. as well as 164 Cr.P.C., the prosecutrix initially has not levelled any allegation against the applicant, however, in concluding part of her statement recorded under Section 164 Cr.P.C., she has stated that she has been sexually assaulted by the applicant.

8. It is vehemently submitted that there are material contradictions in the statements of the prosecutrix and the same appears to have been given under the influence of her family members. It is also submitted that as per educational credentials, date of birth of the prosecutrix is 01.05.2003 by which she comes to be of 20 years at the date and time of the alleged incident and as she was major and has taken contradictory stand in her statements recorded under Section 161 and 164 Cr.P.C., the allegations levelled by her in concluding part of her statement recorded under Section 164 Cr.P.C. could not be believed.

9. It is next submitted that applicant is in jail in this case since 26.07.2023 and he is not having any criminal history, 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.

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 the prosecutrix at the date and time of the alleged incident was aged about 20 years as per her educational credentials and she refused to undergo any medical examination and in her statement recorded under Section 161 Cr.P.C., she has not alleged any allegation against the applicant and in her statement recorded under Section 164 Cr.P.C. also she stated that nothing wrong has been done by the

applicant with her, however, in concluding part of her statement recorded under Section 164 Cr.P.C., she has alleged sexual assault committed by the applicant. It is vehemently submitted on behalf of the applicant that statement of the prosecutrix recorded under Section 164 Cr.P.C. is self contradictory. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 26.07.2023 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- **Noor Mohammad @ Raj** 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/-