

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14350 of 2023

Applicant :- Vikas Kumar

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

Counsel for Applicant :- Gyanoday Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Learned A.G.A. informs that she has procured complete instructions in the matter including upto date case diary and the chargesheet in this case has already 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- **Vikas Kumar** for grant of bail, in Case Crime No. 159 of 2022, under Sections 376, 323 IPC, Police Station Safdarganj, District Barabanki, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that the FIR of this case has been lodged by the prosecutrix herself alleging therein that on 25.4.2022 at about 11.00 pm, when she was sleeping in her room, her dewar (applicant) entered into her room and after tying her mouth with a piece of cloth started assaulting her sexually and when an alarm was raised by her, other family members arrived. However, they persuaded the prosecutrix/victim not to make any complaint, as the reputation of the family would be ruined. When the prosecutrix/victim was not ready to toe to their terms, they started assaulting her and thereafter, the prosecutrix/victim made a call to 112 and the police had arrived.

5. Highlighting the above facts, it is vehemently submitted that though in the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC, she has supported the allegations of the FIR, but it would be evident that the

prosecutrix/victim was married to the real brother of the applicant namely, Deepak Kumar and she was not having cordial relations with her husband and it is on account of estranged matrimonial relations and in order to teach a lesson to the family members of her husband, she has instituted this false case.

6. Elaborating further, it is submitted that the statement of the prosecutrix/victim has been recorded before the trial court as PW-1 wherein she categorically stated that she was not raped by the applicant and also disowned her statements recorded under Sections 161 & 164 CrPC.

7. It is vehemently submitted that when the prosecutrix/victim has not supported the version of the prosecution before the trial court, it would be impossible for the prosecution to secure conviction of the applicant.

8. It is further submitted that the applicant is in jail in this case since 5.8.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

9. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix/victim is the wife of the brother of the applicant. The prosecutrix/victim is having estranged matrimonial relations with her husband (brother of the applicant). The differences between the prosecutrix/victim and her husband appears to have settled now, as is evident from order dated 11.2.2023 passed by the Principal Judge, Family Court, Barabanki, a copy of which has been placed at page no. 30 of the paper book. The statement of the prosecutrix/victim has also been recorded before the trial court wherein she has clearly stated that she was not raped by the applicant. She has also disowned her statements recorded under Sections 161 & 164 CrPC and it is in this background, it is submitted that since the prosecutrix/victim has been declared hostile and has not supported the version of the prosecution, the conviction of the applicant is a remote possibility. The applicant is in jail in this case since 5.8.2023 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

11. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Vikas Kumar** involved in the aforesaid case be released on bail on 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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 6.12.2023

Shravan