

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14353 of 2023

Applicant :- Sandeep

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Civil Sectt. Lko.

Counsel for Applicant :- Sandeep Singh

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 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- **Sandeep** for grant of bail, in Case Crime No. 298 of 2023, under Sections 376D, 504, 506 IPC, Police Station Visheshwarganj, District Bahraich, during trial.
4. 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.
5. It is further submitted that the FIR of this case has been lodged by the prosecutrix herself on 02.08.2023 alleging therein that the prosecutrix is a widow and her two sons are working as labour in Mumbai and one minor daughter is residing with her. In the intervening night of 30.7.2023/31.7.2023 at about 01.00 am, the accused persons entered into her house and committed rape. On an alarm raised by her, her minor daughter also made a noise and thereafter, the accused persons fled away by abusing and intimidating her. The allegations of the FIR have been supported by the prosecutrix/victim in her statements recorded under Sections 161 & 164 CrPC.
6. Highlighting the above facts, it is vehemently submitted that the prosecutrix/victim is in the habit of lodging false cases of sexual assault. Attention of this Court has been drawn towards the FIR of date 30.8.2021 bearing Case Crime No. 193 of 2021 pertaining to PS- Visheshwarganj, Bahraich which was lodged

by none other than the prosecutrix/victim herself alleging therein that the prosecutrix/victim had given Rs. 50,000/- to the applicant in connection with the marriage of her daughter, but the same was not returned and thereafter, the allegations of molestation were levelled against the applicant in that FIR. However, the applicant secured bail in that case and thus in order to pressurize, this false case has been lodged against him.

7. It is vehemently submitted that despite various efforts made by the investigating officer to get the prosecutrix/victim medically examined, she did not respond and consequently, her medical examination report could not be prepared. Thus, in support of the allegations of rape, there are only and only untrustworthy statements of the prosecutrix/victim. She is aged about 38 years.

8. It is further submitted that the applicant is in jail in this case since 18.8.2023 and criminal history of one case has been adequately explained, which was lodged by the prosecutrix/victim herself. 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 evident that before lodging the FIR with regard to the instant case, the prosecutrix/victim had also lodged an FIR earlier in time wherein it was stated amongst other facts that she had given Rs. 50,000/- to the applicant and the said amount was not being returned by him. The defence of the applicant appears to be that the dispute between the prosecutrix/victim and the applicant is pertaining to Rs. 50,000/- which he had taken from the husband of the prosecutrix/victim and also returned the same to her husband. But she under some misconception is of the view that the applicant is not returning the said amount and it is only on that score, the earlier FIR was lodged wherein the applicant was granted bail. When he secured bail in that case, this another case has been filed against him. Admittedly, apart from the statements of the prosecutrix/victim, there is no medical evidence in support of the allegations. The statement of the daughter of the prosecutrix/victim has also been recorded wherein she supported the allegations of sexual assault. However, various submissions have been made by learned counsel for the applicant in order to show that when the

prosecutrix/victim and her daughter aged about 15 years were sleeping in the same room and the daughter of the prosecutrix/victim was not overpowered by any of the accused persons and thus, the commission of sexual assault is not possible in the manner as shown by the informant/prosecutrix. The applicant is in jail in this case since 18.8.2023. 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- **Sandeep** 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