

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14538 of 2023

Applicant :- Vinod Kumar

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

Counsel for Applicant :- Bisunbablu Mishra

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 and charge sheet in this case has been filed.
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- **Vinod Kumar** for grant of bail, in Case Crime No.197 of 2023, under Sections 366, 344, 376 I.P.C., Police Station Harchandpur, District Raebareli, 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 husband of the prosecutrix on 24.06.2023 alleging therein that his marriage was solemnized with the prosecutrix in the year 2013 and in the meantime, they have also blessed with two boys, however, in the intervening night of 12/13.06.2023 when the prosecutrix was sleeping with her children and mother-in-law, at about 03:00am. the applicant entered into his house and abducted the prosecutrix and had taken away her on a motorcycle. As he was working in Punjab, he immediately came back and lodged the F.I.R. The prosecutrix is shown to have been recovered on 29.06.2023 and her statement under Section 161 Cr.P.C. was recorded, wherein she did not level any allegation against the applicant, however, her statement under Section 164 Cr.P.C. was recorded on 01.07.2023, in which she under the influence of the informant and her other family members has levelled the allegation of abduction and also of sexual assault.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the story as narrated by the prosecutrix in her statement recorded under Section 164 Cr.P.C. is tutored one and could not be believed on the touchstone of probability and it is evident that the prosecutrix was a consenting party and she herself had accompanied the applicant and had gone with him and even if any sexual relations were established between them, the same were with the free will and consent of the prosecutrix.

7. It is vehemently submitted that the prosecutrix initially refused to undergo any medical evidence, however, later on she consented to it and no abnormality or injury of any kind has been found on her person during her medical examination. It is also submitted that the age of the prosecutrix is 28 years. She was a married lady and was also having two children and since she was a consenting party, no offence in fact has been committed by the applicant.

8. It is next submitted that applicant is in jail in this case since 10.08.2023 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.

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.

10. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix is 28 years and she was a married lady and was also having two children. In the F.I.R., she is shown to have been abducted while sleeping with her children and mother-in-law and in her statement recorded under Section 161 Cr.P.C., she has not alleged any allegation against the applicant. After many days of the recording of her statement under Section 161 Cr.P.C., her statement under Section 164 Cr.P.C. was recorded, wherein she for the very first time alleged the allegation of abduction and rape. Various submissions have been raised on behalf of the applicant in order to show that the conduct of the prosecutrix in accompanying the applicant on a motorcycle and not raising any resistance as well as staying with him for many days is itself a proof of her consent and statement under Section 164 Cr.P.C. has been given by her under the influence of her husband. Charge-sheet in this case has already been filed.

Applicant is in jail in this case since 10.08.2023 without any previous criminal history. 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- **Vinod Kumar** 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 :- 11.12.2023

Anupam S/-