Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15083 of 2023

Applicant :- Ganga Prasad
Opposite Party :- State Of U.P. Thru. Secy. Home Lko And Another
Counsel for Applicant :- Manisha Trivedi,Vanshraj Dubey
Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

(C.M. Application No.IA/1/2023)

1. Heard Ms. Manisha Trivedi, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

2. Having regard to the averments made in the affidavit enclosed with this application for deletion of the opposite party no.2 is hereby **allowed**.

3. Necessary amendment be made in the memo of bail application forthwith.

4. Learned A.G.A. informs that he has procured complete instructions in the matter including upto date case diary of the case.

5. This bail application has been moved by the accused/applicant- **Ganga Prasad** for grant of bail, in Case Crime No.259 of 2021, under Sections 325, 376, 506 I.P.C., Police Station Auras, District Unnao, during trial.

6. 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.

7. It is further submitted that F.I.R. of this case was lodged by moving an application under Section 156(3) Cr.P.C. and the allegations levelled therein have been aggravated with the help of legal professional moreover it is evident from the contents of the F.I.R. that a small dispute of assault has been given the colour of sexual assault.

8. It is also submitted that allegation of F.I.R. was thoroughly investigated by the investigating officer and finding no substance in the allegations, Final Report/Closure Report was submitted and on a protest petition filed by the victim/informant/complainant after recording of her statement as well as statement of her witnesses under Section 202 Cr.P.C., the trial court has summoned the applicant and three other accused persons under Sections 325, 376, 506 I.P.C.

9. It is vehemently submitted on behalf of the applicant that while summoning the applicant and other accused persons for facing trial, the trial court has not considered any material collected by the investigating officer during the course of investigation, thus in support of allegation of rape there is only statement of the prosecutrix/victim and of her witnesses, who have not yet been cross examined.

10. It is further submitted that identically placed co-accused person namely, Ram Khelawan has been released on bail by a Coordinate Bench of this Court, vide order dated 04.12.2023 passed in Criminal Misc. Bail Application No.14212 of 2023. It is next submitted that applicant is in jail in this case since 22.09.2023 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.

11. 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.

12. Having heard learned counsel for the parties and having perused the record, it is evident that F.I.R. of this case has been lodged under the order of the court passed under Section 156(3) Cr.P.C. After thorough investigation, Closure Report/Final Report was submitted by the investigating officer. Aggrieved by the same, the victim/informant appears to have approached the trial court by moving protest petition, which was treated as complaint and after recording of statement of the prosecutrix under Section 200 Cr.P.C. as well as of her witnesses under Section 202 Cr.P.C., the applicant and other accused persons have been summoned to face trial. The defence of the applicant appears to be that allegations of the F.I.R. have been thoroughly investigated and no substance in these allegations has been found and Final Report/Closure Report was submitted. Another defence of the applicant appears to be that trial court while

summoning the applicant and other accused persons to face trial has not taken into consideration any material/evidence collected by the investigating officer during the course of investigation and no order for investigation under Section 202 Cr.P.C. has been passed. Thus in nutshell defence of the applicant appears to be that in support of the allegation of sexual assault, there is only uncorroborated statement of the prosecutrix, who is yet to be cross examined. Identically placed co-accused person namely, Ram Khelawan has been released on bail by a Coordinate Bench of this Court. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 22.09.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

13. 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**.

14. Let the accused/applicant- **Ganga Prasad** 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.

15. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

16. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

17. 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 :- 22.12.2023
Anupam S/-

Digitally signed by :-
ANUPAM SINGH PATEL
High Court of Judicature at Allahabad,
Lucknow Bench