

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 15310 of 2023

Applicant :- Nankaye @ Pramod

Opposite Party :- The State Of U.P. Thru. Its Prin. Secy. Home Deptt., Govt. Lko.

Counsel for Applicant :- Ajey Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Manoj Kumar Singh, Advocate has filed his 'vakalatnama' on behalf of the complainant/informant, the same is taken on record.

2. It is informed by learned A.G.A. that he has procured complete instructions in the matter including up-to-date case diary.

3. Heard Shri Ajey Singh, learned counsel for the accused-applicant, Shri Manoj Kumar Singh, learned counsel for the complainant/informant as well as learned A.G.A. for the State and perused the record.

4. This bail application has been moved by the accused/applicant- **Nankaye @ Pramod** for grant of bail, in Case Crime No. 0482 of 2023, under Sections 376, 457, 506 and 504 I.P.C., Police Station Hardi, District Bahraich, during trial.

5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the informant/victim herself, wherein it is alleged that on 28.08.2023 at about 12:00 hours in the night when her husband was not present, the applicant entered into her house and committed rape on her while her two minor children were sleeping by her side and her mother was sleeping in a different house situated nearby. The prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. has narrated the same story.

6. Highlighting the above facts, it is vehemently submitted by learned counsel for the applicant that the story, as cooked up by the prosecutrix is highly improbable, concocted and could not

be believed on the touchstone of probability. Elaborating further, it is submitted that admittedly the applicant was not having any weapon with him at the time of the alleged incident and the prosecutrix has been medically examined only after two days of the alleged incident i.e. 01.09.2008 and even not a scratch or any abrasion or bruise has been found anywhere on the person of the prosecutrix belying the whole story cooked up by her.

7. It is further submitted that age of the prosecutrix at the time of the alleged incident was about 32 years. She was a married lady having two minor children and the implication of the applicant is only on the basis of previous enmity. Applicant is languishing in jail in this case since 05.09.2023 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. 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, therefore, he is not entitled to be released on bail.

9. Shri Manoj Kumar Singh, learned counsel for the complainant/informant vehemently opposes the prayer of bail of the applicant on the ground that the allegation of rape, as levelled in the F.I.R. has been corroborated by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. and the F.I.R. itself is prompt and, thus, having regard to the evidence available against the applicant, he is not entitled to be released on bail.

10. Perusal of the record would reveal that age of the prosecutrix at the time of the alleged incident was about 32 years. She is a married lady having two minor children. At the date and time of the incident her husband is shown to be out of the house, however, certain contradictions have been highlighted by learned counsel for the applicant with regard to the absence of the husband of the informant, as according to him in the F.I.R. as well as in the statement of the prosecutrix recorded under Section 164 Cr.P.C. she has stated that her husband had gone to do darshan of 'Mata Vaishno Devi' and her statement recorded under Section 161 Cr.P.C. it is stated by her that her husband had gone to visit a fair. The medical reports of the prosecutrix are clean. No injury of any kind or any abnormality has been noticed by the doctor while she was under medical examination. Applicant is languishing in jail in this case since 05.09.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court

by placing 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 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- **Nankaye @ Pramod** 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 on the merits of the case.

Order Date :- 22.12.2023

Praveen