

Court No. - 12

WWW.LIVELAW.IN

**Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7430
of 2020**

Applicant :- Ram Audhi @ Sudhir Kumar

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Sarfraz Ahmad, Amit Kumar Awasthi, Narendra Singh, Shubham Shukla

Counsel for Opposite Party :- G.A., Alok Kumar Singh, Sanjay Singh Chauhan

Hon'ble Rajeev Singh, J.

Heard learned counsel for the applicant as well as learned A.G.A. for the State of U.P. and perused the record.

The present bail application has been filed on behalf of the applicant in Case Crime No. 636 of 2019, under Sections 376-D, 377, 506 I.P.C. and Section 3/4, 5 G of the POCSO Act, Police Station- Khiri, District- Khiri, with the prayer to enlarge him on bail.

Learned counsel for the applicant submitted that due to panchayat election the applicant was falsely implicated on behest of Ambrish and father of the prosecutrix. He further submitted that father of the prosecutrix is habitual of using the prosecutrix and her sister as a tool and earlier F.I.R. as case crime no. C-292 of 2013 under Sections 363, 366, 368, 376 I.P.C., Police Station-Khiri District- Khiri was lodged by the sister of the prosecutrix against the other villagers and thereafter she entered into compromise and the final report was submitted by the Investigating Officer. He further submitted that as per prosecution version the prosecutrix is aged about 20 years and on 28.10.2019 at about 10:00 a.m. she went to field of paddy crop and then applicant and other co-accused persons came there and caught her hand and started dragging the prosecutrix and at the same time brother of prosecutrix reached on the spot and all the accused persons ran away. Learned counsel for the applicant submitted that this F.I.R. was lodged on 28.10.2019 at 18:51 hours after eight hours about the incident. Prosecutrix was medically examined and her statements under Sections 161 Cr.P.C. and 164 Cr.P.C. were also recorded in which she developed a case of rape against the accused persons and the applicant. The statement of the brother of the prosecutrix was also recorded in which he stated that he went to take sugar cane leaves and after hearing the crying of her sister he reached on the spot and saw that accused persons including the applicant were committing rape with the

prosecutrix and after seeing him they ran away by giving life threat but medico legal report of the prosecutrix does not support the oral testimony of the prosecutrix, as she stated that gang rape was committed with her.

Learned counsel for the applicant has further submitted that in the counter affidavit criminal history of five cases has been shown against the applicant and out of five cases the applicant has been acquitted in three cases and this fact has been mentioned in the paragraph no. 12 of the rejoinder affidavit. The applicant is in jail since 2.12.2019 and till today trial has not been concluded while as per Section 35 of the POCSO Act the trial court shall record the statement of the victim within one month and trial shall be concluded within one year. Therefore, the applicant is entitled for bail. In case of being enlarged on bail, he will not misuse the liberty of bail.

Learned A.G.A. has opposed the prayer for grant of bail to the applicant but he has not disputed the fact that there is contradiction in the contents of the F.I.R. and the statement of the victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C. He also submitted that F.I.R. is in encyclopedia, as allegation of rape has been made against the applicant and other co-accused persons.

Considering the rival submissions of learned counsel for parties, considering the contents of the F.I.R. and the statement of the brother of the informant as well as medico legal report of the prosecutrix and without expressing any opinion on the merits of the case, I am of the view that the applicant is entitled to be released on bail.

Let applicant - **Ram Audhi @ Sudhir Kumar** be released on bail in aforesaid Case Crime, on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

- (1) Applicant will not try to influence the witnesses or tamper with the evidence of the case or otherwise misuse the liberty of bail.
- (2) Applicant will fully cooperate in expeditious disposal of the case and shall not seek any adjournment on the dates fixed for evidence when witnesses are present in the Court.
- (3) Applicant shall remain present, in person, before the trial court on the dates fixed for (a) opening of the case, (b) framing of charge; and (c) recording of statement under Section 313

Any violation of above conditions will be treated misuse of bail and learned Court below will be at liberty to pass appropriate order in the matter regarding cancellation of bail.

On perusal of the case diary provided by the learned A.G.A. it appears that site plan is prepared by the Investigating Officer in a most cursory manner, as it is duty of the Investigating Officer to take all precautions to prepare true site plan with dimensions during the course of the investigation and it is obligatory to show distance from one point to other..

Director General of Police, U.P., is directed to issue necessary direction in relation to the preparation of true site plan/map with dimensions by the Investigating Officer in the correct manner and also ensure for taking photograph of the spot and annexed with site plan, as nowadays every Investigating Officer is having smart phone.

Office is directed to communicate this order to D.G.P. Police.

Order Date :- 25.2.2022
Anuj Singh