

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7770 of 2023

Applicant :- Smt. Anita

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Viveka Nand Rai, Arun Kumar Vishvakarma

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Shri Arun Kumar Vishvakarma, learned counsel for the applicant, Shri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.
3. This bail second application under Section 439 of Code of Criminal Procedure has been filed by the applicant Smt. Anita seeking her enlargement on bail during trial in connection with Case Crime No.44 of 2020, under Sections 376, 120-B IPC and Sections 3/4 POCSO Act, registered at P.S. Dauki, District Agra.
4. Notice was issued to the first informant/opposite party no.4 vide order dated 17.02.2023 passed by a Co-ordinate Bench of this Court.
5. As per the office report dated 22.03.2023, notice has been served on the the first informant/opposite party no.4.
6. Despite service of notice, no one appears on behalf of the the first informant/opposite party no.4.
7. In compliance of the order dated 21.04.2023, learned counsel for the State has filed an affidavit dated 02.05.2023, which is on record. The Court has perused the same.
8. This is the second bail application. The first bail application of the applicant was rejected vide order dated 09.02.2021 passed by Hon'ble Umesh Kumar, J. (as he was then) in Criminal Misc. Bail Application No.38419 of 2020 (Smt. Anita Vs. State of U.P. and Another).
9. Learned counsel for the applicant argued that the fresh and new

ground in the present matter is that the victim as P.W.-1, Santosh Kumar, the first informant and the father of the victim as P.W.-2 and Smt. Gaura Devi, the mother of the victim and wife of the first informant as P.W.-3 were examined before the trial court and all the three witnesses have been declared hostile. It is argued that the victim has stated that she was returning from the field carrying fodder and she slipped and received injuries on her private parts. It is argued that looking to the said statement, the implication of the applicant in the present matter is false. The applicant is having no criminal history as stated in para 12 of the affidavit filed in support of the bail application and is in jail since 05.12.2020.

10. Per contra, learned counsel for the State has opposed the prayer for bail vehemently and argued that in so far as the victim P.W.-1 and the first informant Santosh Kumar P.W.-2, who is the father of the victim are concerned. They have supported the prosecution case in their examination-in-chief. Subsequently in the cross-examination, they have given a different version. It is argued that looking to the same, it cannot be said that the prosecution case is uncorroborated and has been totally denied by the same. It is argued that the first bail application of the applicant has been rejected on merits by a Co-ordinate Bench of this Court and by the said order, the trial was expedited. The trial is under process and release of the applicant at this stage may have adverse effect.

11. Having heard learned counsel for the parties and having gone through the records, it is evident that this is the second bail application. The first bail application was rejected by a Co-ordinate Bench of this Court vide order dated 09.02.2021, the said order reads as under:-

"Heard learned counsel for the applicant, learned counsel for the informant as well as learned A.G.A. for the State and perused the material placed on record.

This bail application has been preferred by the accused-applicant- Smt. Anita, who is involved in Case Crime No. 0044 of 2020, under Sections- 376 I.P.C., 120B and 3/4 of POCSO Act, Police Station-Dauki, District-Agra.

Learned counsel for the applicant submits that applicant is innocent and falsely been implicated in this case due to village party bandi; that the present offences are not attracted against the applicant; that there is inordinate delay in lodging the F.I.R.; that there is contradiction in the statements of the victim recorded under Section 161 and 164 Cr.P.C.; that there was love affair of the victim with the co-accused Dharmendra and due to pressure of the family the victim made false allegation of conspiracy against the applicant only being Bhabhi of the co-accused; that the applicant being lady is entitled for the benefit provided under Section 437 Cr.P.C. Besides above submissions, the

circumstances which according to learned counsel for the applicant led to the false implication of the applicant has also been tried to be touched upon at length; that applicant is in jail since 5.12.2019 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial and thus, the applicant is entitled for indulgence.

Learned A.G.A as well as learned counsel for the informant has vehemently opposed the prayer for grant of bail and submitted that as per medical examination as well as other documents, the victim is minor and according to the opinion of doctor there is no physical injury seen but genital injury and sign of penetration is present; that in her statements under Section 161 and 164 Cr.P.C the victim has clearly stated that the accused-applicant had taken her to the house where co-accused had committed rape with her, furthermore statements of the victim indicate that there is active participation of the accused-applicant in commission of the offence, thus, the applicant is not entitled for indulgence by the Court.

Keeping in view the nature of offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without touching the merits of the case in my opinion the accused applicant is not entitled for bail.

*Accordingly, bail application is **rejected**.*

However, learned Trial Court is directed to expedite the trial after providing opportunity to both sides, in accordance with law without granting any unwarranted adjournment to either of the parties unless required for very compelling reasons and conclude the same preferably within a period of one year following the provisions of 309 Cr.P.C. from the date of production of copy of this order before it."

12. In so far as the trial is concerned, the victim, the first informant and the mother of the victim have been examined in the trial. The victim and the first informant have supported the prosecution case in their examination-in-chief before the trial court. The trial is under process and release of the applicant at this stage may have adverse effect.

13. In view of the above, I do not find it to be a fit case for bail.

14. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

15. The second bail application filed by the applicant - **Smt. Anita** is, accordingly, **rejected**.

Order Date :- 16.10.2023/Zafar

(Smit Gopal,J.)