

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9837 of 2023

Applicant :- Akhalesh

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

Counsel for Applicant :- Sushil Kumar Pandey, Pratima Pandey, Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sushil Kumar Pandey, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant- Akhalesh seeking his enlargement on bail in Case Crime No. 197 of 2018, under sections 376 (D), 323 IPC and Section 3/4 POCSO Act, Police Station- Dataganj, District Budaun during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon first informant/opposite party-2 on 24.02..2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant/opposite party-2 to oppose this application.

5. First bail application of applicant was rejected by this Court by a short but crisp order dated 17.04.2019 passed in Criminal Misc. Bail Application No. 29773 of 2018 (Akhalesh Vs. State of U.P.) For ready reference, same is reproduced herein under:

"Heard Sri Sushil Kumar Pandey, learned counsel for the applicant and

the learned AGA.

This bail has been preferred by the applicant in Case Crime no. 197 of 2018, under Section 376(D) / 323 IPC and 3/4 of POCSO Act, P.S. Dataganj, District Budaun.

It is submitted by learned counsel for the applicant that victim received no injuries, allegations are false as earlier the role of committing rape was assigned only to the applicant, whereas in statement under Section 164 CrPC, victim also implicated co-accused Pappy, who has been enlarged on bail by this Court on 19.6.2018 in Crl. Misc. Bail Application No. 22415 of 2018, applicant has no previous criminal history, he be enlarged on bail.

Learned A.G.A, opposed the prayer of bail on the ground that victim was of only 15 years at the time of occurrence, parity of co-accused Pappy cannot be extended to the applicant as the case of applicant is on different footing.

Considering the rival contentions, the Court does not find any good ground to enlarge the applicant on bail.

The bail application stands rejected.

Order Date :- 17.4.2019 "

6. The second bail application of applicant was rejected by this Court by a an order dated 07.12.2021 passed in Criminal Misc. Bail Application No. 13089 of 2021 (Akhalesh Vs. State of U.P.)
For ready reference, same is extracted herein under:

"Heard learned counsel for the applicant, learned A.G.A. for State and perused the material available on record.

This is the second bail application filed on behalf of the applicant. The first bail application of the applicant was dismissed by Hon'ble Pankaj Naqvi, J on merit vide order dated 17.04.2019 in Criminal Misc. Bail Application No.29773 of 2018.

Accused-applicant, involved in Case Crime No.197 of 2018, under Sections 376(D), 323 IPC & 3/4 POCSO Act, Police Station Dataganj, District Budaun, applied for bail.

There is no new ground except detention of accused-applicant in jail.

Having regard to the submissions made by learned Counsel for the parties; I see no good ground to enlarge the accused-applicant on bail.

Accordingly, second bail application is hereby rejected.

Order Date :- 7.12.2021 "

7. Learned counsel for applicant has filed a supplementary affidavit in court today which is taken on record.

8. It is contended by the learned counsel for applicant the prosecutrix has deposed before court below. However, the prosecutrix in her statement has stated that she stated the names of accused on the information of father and mother. He therefore submits that prosecutrix has failed to identify the present applicant in the crime in question. On the above premise, it is thus urged that applicant is liable to be enlarged on bail.

9. Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in custody since 12.03.2018. As such he has undergone more than five years and eight months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore contends that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

7. Per contra, the learned A.G.A. for State has vehemently opposed this repeat application for bail. He submits that applicant has criminal history of one case i.e. Case Crime No. 659 of 2016 under Section 323, 324, 504 and 506, P.S. Datagnaj District-Bulandshahar. The same has not been explained in the affidavit filed in support of the present application for bail. The prosecutrix in her statement in chief before court below has clearly implicated

the applicant in the crime in question. According to learned A.G.A., even though this Court is a superior Court, dictates of prudence require that bail court should refrain from any observation regarding the nature and impact of evidence which has emerged during the pendency of trial as any such observation will affect the prosecution or the defence as the case may be. He therefore contends that no good or sufficient ground is made out to enlarge the applicant on bail.

8. When confronted with above the learned counsel for applicant could not overcome the same.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, accusations made as well as complicity of applicant coupled with the fact that it cannot be conclusively concluded that the complicity of the applicant is not established in the crime in question as per the statement in chief of the prosecutrix, therefore irrespective of the submissions urged by the learned counsel for applicant in support of present repeat application for bail, this Court finds that no new or good ground has been made out to enlarge the applicant on bail.

10. As a result, the repeat application for bail fails and is liable to be **rejected**.

11. It is accordingly **rejected**.

Order Date :- 31.10.2023

YK