

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 24076 of 2023

**Applicant :-** Akash Pandey

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

**Counsel for Applicant :-** Aushim Luthra, Harishchandra Yadav

**Counsel for Opposite Party :-** G.A., Renu Sharma

**Hon'ble Rajeev Misra, J.**

1. Heard Mr. Aushim Luthra, the learned counsel for applicant, the learned A.G.A. for State and Ms. Renu Sharma, the learned counsel representing opposite party-3, High Court Legal Services Committee, High Court Allahabad.

3. Perused the record.

4. This repeat application for bail has been filed by applicant- Akash Pandey seeking his enlargement on bail in Case Crime No. 259 of 2022, under sections 376 IPC and Section 3/4 POCSO Act, Police Station- Harraiya, District Basti during the pendency of trial i.e. Sessions Case No. 827 of 2022 (State Vs. Akash Pandey) now pendng in Court of Additional Sessions Judge/Special Judge (POCSO Act) under Section 376 I.P.C. and Sections 3/4 POCSO Act, Police Station- Harraiya, District Basti.

5. First bail application of applicant was rejected by this Court by a detailed order dated 15.12.2022 passed in Criminal Misc. Bail Application No. 56215 of 2022 (Akash Pandeyt Vs. State of U.P. and 3 others) For ready reference, same is reproduced herein under:

*"Heard Mr. R.P. Srivastava, the learned counsel for applicant and the*

*learned A.G.A. for State.*

*This application for bail has been filed applicant Akash Pandey seeking his enlargement on bail in Case Crime No. 259 of 2022, under sections 376 IPC and 3/4 POCSO Act, Police Station- Harriya, District Basti during the pendency of trial.*

*Perused the record.*

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

*It transpires from record that in respect of an incident which is alleged to have occurred on 26.7.2022 a prompt F.I.R. dated 26.7.2022 was lodged by first informant Faldeen Nishad and was registered as Case Crime No. 259 of 2022, under sections 376 IPC and 3/4 POCSO, Police Station- Harriya, District Basti. In the aforesaid F.I.R. applicant- Akash Pandey has been nominated as solitary named accused.*

*The gravamen of the allegations made in the F.I.R. is to the effect that on 26.7.2022 in between 5:30 to 6:00 pm, the prosecutrix had gone out to attend the call of nature. However, she did not return. Therefore, a search regarding her whereabouts was conducted. Ultimately the applicnat was seen dislodging the modesty of prosecutrix in the bushes near the pond.*

*After registration of aforementioned F.I.R., Investigating Officer proceeded with statutory investigation of concerned Case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined first informant under section 161 Cr.P.C who has supported the prosecution story as unfolded in F.I.R. Thereafter the prosecutrix was examined by the Investigating Officer. She in her statement under Section 161 Cr.P.C. has not only supported the F.I.R. but has also detailed the manner of occurrence. Subsequently, prosecutrix was requested for her medical examination. Prosecutrix in her statement before the Doctor has reiterated her earlier statement recorded under section 161 Cr.P.C. With regard to private part of the prosecutrix, the Doctor opined as follows: "Torned and bleeding". Certain samples were taken from the body of*

deceased for pathological examination. However, supplementary medical report has not been brought on record. Thereafter, the statement of prosecutrix was recorded under section 164 Cr.P.C. wherein she has again supported the F.I.R. by joining her earlier statement recorded under section 161 Cr.P.C. Investigating Officer thereafter examined certain other witnesses who have supported the F.I.R. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of the named accused is established in the crime in question. Accordingly he submitted the charge sheet dated 30.8.2022, whereby applicant has been charge-sheeted under sections 376 IPC 3/4 POCSO Act.

Learned counsel for applicant submits that though the applicant is a named as well as charge sheeted accused but he is innocent. He has then invited attention of Court to the injuries sustained by applicant, copy of the injury report of applicant is at page 58 of the paper book. On the basis of above, it is sought to be contended that present criminal proceedings are not only false but also malicious. It is then contended that applicant is a young man aged about 25 years, who has been falsely and maliciously dragged in aforesaid case crime number. Attempt is also made to dislodge the credibility of prosecutrix.

It is then contended that applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 27.7.2022. As such, he has undergone more than 4 and 1/2 months of incarceration. In case applicant is enlarged on bail he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A has opposed this application. He submits that applicant is named as well as charge sheeted accused. Medical evidence clearly support the ocular version of the occurrence as is discernible from the statement of prosecutrix recorded under section 164 Cr.P.C. Same is not only clear and categorical but also consistent. There is no consistency or contradiction in the same. Prosecutrix in her aforesaid statement has clearly supported the prosecution story as unfolded in F.I.R. and has also detailed the manner of occurrence. Applicant has criminal history of three cases, which has not been explained. On the aforesaid premise, learned

*A.G.A. submits that applicant does not deserve any indulgence by this Court.*

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

*Having heard the learned counsel for applicants, the learned A.G.A. for State, upon perusal of material brought on record, as well as complicity of applicants, accusations made coupled with the fact that medical evidence clearly supports the prosecution story, the prosecutrix in her statements under section 161/164 and before the Doctor has been clear and categorical, the manner of occurrence, there bein nothing on record to infer false or malacious prosecution of applicant but without making any comment on the merits of the case, this Court does not find good ground to enlarge the applicant on bail.*

*In view of above, the present application fails and is liable to be rejected.*

*It is accordingly rejected.*

*Order Date :- 15.12.2022 "*

6. Learned counsel for applicant submits that subsequent to order dated 15.12.2022 first informant Phaldeen has deposed before court below as P.W.-1. The prosecutrix has also been examined as P.W.-2. On the above premise, he submits since the oral evidence of primary prosecution witness has already been recorded therefore, no useful purpose shall be served in prolonging the custodial arrest of applicant. Even otherwise applicant is in jail since 27.07.2022. As such he has undergone more than one year and two months of incarceration. On the cumulative strength of above, he submits that applicant is liable to be enlarged on bail.

7. Per contra, the learned A.G.A. for State and the learned counsel representing opposite party-3 have vehemently opposed this repeat application for bail. They submit that two prosecution witnesses of fact, who have been examined upto this stage i.e. P.W.-1 and P.W.-2, have clearly supported the F.I.R. Moreover, no such inference

can be drawn from the testimonies of aforesaid two witnesses of fact that prosecution of applicant is false or malicious. They therefore submit that no new, good or sufficient ground has been made out to enlarge the applicant on bail. As such, present repeat application for bail is liable to be rejected by this Court.

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, the learned counsel representing opposite party-3, upon consideration of material on record, evidence, accusations made as well as complicity of applicant coupled with the fact first informant and the prosecutrix have been examined by court below as P.W.-1 and P.W.2, both the witnesses have clearly and categorically supported the F.I.R., no such inference can be drawn from the testimony of aforesaid two witnesses of fact that prosecution of applicant is false or malicious, the complicity of the applicant in the crime in question is fully established as per the statement 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 :- 18.10.2023**

YK