

**Court No. - 33**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 33880 of 2023

**Applicant :-** Satendra

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Lal Vijai Singh

**Counsel for Opposite Party :-** G.A.,Sushil Dubey

**Hon'ble J.J. Munir,J.**

Heard Mr. Lal Vijai Singh, learned Counsel for the applicant, Mr. Sushil Dubey, learned Counsel for the complainant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of the State.

This is a third bail application on behalf of the applicant, **Satendra** in Case Crime No. 452 of 2020, under Section 376 IPC, Police Station- Kotwali Dehat, District Bulandshahr. The first bail application, being Criminal Misc. Bail Application No. 25959 of 2020 was rejected by me *vide* order dated 17.09.2020. The second bail application was made and registered as Criminal Misc. Bail Application No. 40895 of 2021. It was dismissed as not pressed on 04.03.2022. Now, this application, which is formally a third application but substantially a second, has been made on the ground that the trial has substantially progressed, wherein witnesses of fact have been examined and spoken exculpatory.

Learned Counsel for the applicant has invited the attention of the Court to the testimony of the prosecutrix during trial, where she has testified that the occurrence did happen, but it involved some unknown offender, whom she could not identify or see. She has said that her statement to the Police implicating the applicant has

been incorrectly recorded and her statements before the learned Magistrate and the doctor were all made at the instance of Police Officers investigating the case. She has taken a categorical stand in her testimony that the applicant, who was present in Court, is not the man who had ravished her or outraged her modesty in any manner. Learned Counsel for the applicant, therefore, urges that given this change of stance of the prosecutrix that has reliably come before the trial Court, there is no good ground to detain the applicant any further in jail pending trial.

Mr. Shashi Shekhar Tiwari, learned A.G.A., on the other hand, has opposed the bail plea. He submits that so far as the testimony of the prosecutrix is concerned, it is a matter to be judged at the trial and on its basis, the applicant does not have a right to be enlarged on bail.

On considering the entire facts and circumstance, nature and gravity of the offence, in particular, testimony of the prosecutrix during trial, this Court is of opinion that while it may not be proper to opine on the merits of the testimony, it does need to be said that given the state of the testimony at this stage, there does not appear to be any warrant to detain the applicant further in jail pending trial.

Accordingly this bail application is **allowed**.

Let the applicant **Satendra** involved in Case Crime No. 452 of 2020, under Section 376 IPC, Police Station- Kotwali Dehat, District Bulandshahr be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the Trial Court with the following conditions :

i) The applicant shall not tamper with the prosecution evidence.

ii) The applicant shall not threaten or harass the prosecution witnesses.

iii) The applicant shall appear on the date fixed by the trial court.

iv) The applicant shall not commit an offence similar to the offence of which the applicant is accused, or suspected of the commission.

v) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing facts to the Court or to any police officer or tamper with the evidence.

In case of default of any of the condition(s) enumerated above, the complainant would be free to move an application for cancellation of bail before this Court.

It is clarified that anything said in this order is limited to the purpose of determination of this bail application and shall, in no way, be construed as an expression of opinion on the merits of the case. It is further clarified that the Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led, unaffected by anything said in this order.

**Order Date :- 2.11.2023**

Vijay