

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49685 of 2021

Applicant :- Bachchan Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Pankaj Kumar Tiwari, Ram Chandra Tripathi

Counsel for Opposite Party :- G.A., Abhay Pratap Singh

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Pankaj Kumar Tiwari, learned counsel for the applicant and Sri Ajai Singh, learned A.G.A.-I for the State and perused the material on record. Sri Abhay Pratap Singh, learned counsel for the first informant is not present.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Bachchan Singh, seeking enlargement on bail during trial in connection with Case Crime No. 74 of 2020, under section 354(ka) 376D, 506 I.P.C., 6 Protection of Children for Sexual Offences Act, 2012 and 67(A) Information Technology (Amendment) Act, Police Station Narora, District Bulandshahar.

4. This is a second bail application. The first bail application of the applicant was rejected vide order dated 21.09.2021 passed by this Court in Criminal Misc. Bail Application No. 30702 of 2021 (Bachchan Singh Versus State of U.P. and another).

5. The FIR of the present matter was lodged on 30.05.2020 against Bablu @ Chhotalla and the applicant by the victim herself alleging therein that Bablu @ Chhotalla was her friend. He by misrepresenting on phone called her in January at about 2.00 P.M. near the field of sugarcane in the village. He called Bachchan Singh the applicant who was his friend also. Both the persons together made her objectionable videos. She objected to it on which they threatened her and tried to commit illegal act with her. She informed about it to her family members. After which the said persons made the said video viral after 4-5 days. Her family members are in terror. They may get them murdered. The F.I.R. be

lodged and action be taken.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim is a major girl aged about 19 years. She is a consenting party and she joined the company of the co-accused out of her own sweet will. Para 22 of the affidavit has been placed before the Court. It is argued that no such video alleged to have been objectionable has been made viral by the applicant. It is argued that the trial in the matter has started in which Dr. Sudha has been examined as P.W.-1 who has stated that there was no injury on the victim when she medically examined her. There was no evidence of rape being committed on her. It is argued that the victim for the first time stated of rape being committed on her. It is argued that the applicant is in jail since 03.06.2020 and thus be released on bail. It is further argued that the victim was examined as P.W.-2 before the trial court who has not supported the prosecution story. The statement of victim/P.W.-2 has been placed before the Court which is annexed as Annexure No. 1 to the second supplementary affidavit dated 22.01.2023. It is further argued that the father of the victim Naresh Kumar was also produced and examined as P.W.-3 before the trial court who has also not supported the prosecution story and has also been declared hostile. The said statement has been placed before the Court which is Annexure S.A.-2 to the same supplementary affidavit. It is further argued that the applicant be thus released on bail.

7. Per contra learned counsel for the State vehemently opposed the prayer for bail and argued that insofar as the alleged video recording is concerned the same has been recovered by the police and after considering the same charge sheet has been submitted against the applicant and co-accused. It is argued that this is second bail application. The first bail application of the applicant was rejected by a detailed order on merits. It is further argued that insofar as the victim and her father are concerned their turning hostile before the trial court clearly shows of tampering with evidence since the objectionable video has been recovered during investigation which is part of the case diary. Paras 12, 13, 15 and 20 of the counter affidavit of the State has been placed before the Court to buttress the said arguments. It is argued that looking to the same the bail application of the applicant be rejected.

8. After hearing the counsel for the parties and perusing the record, it is apparent that this is second bail application. The first bail application of the applicant was rejected by this Court vide order dated 21.09.2021. The counter affidavit of the State clearly shows

that the objectionable video of the victim and the accused was recovered by the Investigating Officer which is part of the investigation. The victim and her father not supporting the prosecution case in the trial is a matter to be appreciated in the trial since there is evidence of video which is objectionable in nature and the prosecution is under the Information Technology Act also.

9. Looking to the facts and circumstances of the case, there is no fresh and new ground in the present bail application, hence, the bail application is **rejected**.

Order Date :- 28.11.2023

K.K. Maurya

(Samit Gopal,J.)