

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39283 of 2023

Applicant :- Anand Babu

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

Counsel for Applicant :- Ravi Shankar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Ravi Shankar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by applicant-Anand Babu seeking his enlargement on bail in Case Crime No.575 of 2018, under Sections 363, 506, 376 IPC and Section 3/4 Pocso Act, Police Station Sahaswan, District Budaun during the pendency of trial i.e. Sessions Trial No.439 of 2019 (State Vs. Anand Babu), under Sections 363, 376, 506 IPC and Section 3/4 Pocso Act, Police Station Sahaswan, District Budaun.

Perused the record.

The first bail application of the applicant was rejected by this Court by a detailed order 27.09.2022 passed in Criminal Misc. Bail Application No.12833 of 2019. For ready reference, the order dated 27.09.2022 is reproduced herein-under :-

"Heard learned counsel for the applicant, learned counsel for the complainant as well as learned A.G.A. for State and perused the record.

It is submitted by learned counsel for the applicant that the applicant is innocent and has been falsely implicated in the present case for committing rape with the victim/complainant who was aged about 14 years at the time of alleged incident. Further submitted that there is no any other evidence on record to show that the rape was committed with the victim except her statement. Even in medical examination report no sign of rape was found by the Doctors. Applicant is in jail since 06.12.2018 and the trial is not likely to be concluded in near future. There is no any criminal history against the applicant. In case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

Learned counsel for the complainant as well as learned A.G.A. have opposed the prayer for bail and urged that in this case the victim was minor at the time of alleged incident and the rape was committed with her. She herself lodged the F.I.R. and also made version against this applicant for committing rape even in her statement under Section 164 Cr.P.C. before the learned Magistrate and video was also prepared by this applicant after making the victim naked by threatening her on the point of pistol. Therefore, he is not entitled for bail.

Considering the submission of learned counsel for the parties, facts of the case, nature of allegation, gravity of offence, without expressing any opinion

on the merits of the case and the fact that the victim was minor at the time of alleged incident and there is allegation of rape against this applicant even in F.I.R. and in the statement under Section 164 Cr.P.C. as recorded by the Magistrate, the Court is of the opinion that it is not a fit case for bail. Hence the bail application of applicant Anand Babu involved in Case Crime No. 575 of 2018, under Section 363, 506, 376 I.P.C. and Section 3/4 POCSO Act, Police Station-Shahaswan, District-Budaun is hereby rejected.

However, learned trial court is directed to make endeavour to proceed with the trial and conclude it, as expeditiously as possible, within a period of six months, from the date of production of certified copy of this order, as per provisions contained under Section 309 Cr.P.C."

Learned counsel for applicant submits that the applicant is a named as well as charge-sheeted accused, inasmuch as, charge-sheet was submitted against applicant on 02.02.2019. After submission of the charge-sheet, cognizance was taken upon the same by the concerned Magistrate. As offence complained of is cognizable by the court of Sessions, consequently the concerned Magistrate committed the case to the court of Sessions. Resultantly, Sessions Trial No.439 of 2019 (State Vs. Anand Babu) came to be registered and is now pending in the Court of Additional District & Sessions Judge/Special Judge (Pocso Act), Court No.3, Budaun. Subsequently, charges were framed against applicant vide order dated 05.07.2020. He further contended that the trial commenced and up to this stage only five prosecution witnesses of fact, namely, Chanchal PW-1; Ankur Kumar S.I. PW-2; Jagatpal PW-3' Dr. Shobha PW-4 and Vimlesh PW-5 have been examined, whereas there are 18 witnesses nominated in the charge-sheet. He therefore submits that the trial is proceeding at a snail's pace. The statement of the prosecutrix/first informant has already been recorded. As such, there can be no issue with regard to tempering of the material evidence or terrorizing the material witnesses of fact. Referring to the judgement of Supreme Court in **Abdul Rehman Antulay and Others Vs. R.S. Nayak and Another 1992 (1) SCC 225**, learned counsel for applicant urged that right to speedy trial is now recognized as a fundamental right of an accused. Since the applicant is in custody therefore, he cannot be held responsible for the delay in conclusion of trial. The applicant cannot be made to suffer on account of the lackadaisical approach of the prosecution in pursuing the trial. On the above premise, he therefore contends that applicant is liable to be enlarged on bail.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 06.12.2018. As such, he has undergone more than four years and nine months of incarceration. The police report under Section 173 (2) CrPC has already been submitted against the applicant therefore, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. According to the learned

counsel for applicant, in view of changed facts and circumstances as noted herein-above, no useful purpose shall be served in prolonging the custodial arrest of the applicant. It is thus urged that the 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge-sheeted accused therefore, he does not deserve any indulgence by this Court. He submits that the prosecutrix is a young girl aged about 14 years whose modesty has been deliberately dislodged by the applicant. Up to this stage, no such material has been brought on record to contradict the same. It is also apposite to mention here that since the prosecutrix is below 16 years of age therefore, rigours of law laid down by the Apex Court in the case of **X (Minor) Vs. State of Jharkhand 2022 Livelaw (SC) 194** are fully attracted in the present case. As such, no sympathy be shown by this court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that the prosecutrix in her deposition before the court below has fully supported the FIR, the prosecutrix is a young girl aged about 14 years whose modesty was dislodged by applicant, up to this stage there is nothing on record to infer malicious or false prosecution of the applicant, considering the facts and circumstances of the case and the age of the prosecutrix as well as the nature and gravity of offence therefore irrespective of the varied submissions urged by the learned counsel for applicant, this Court does not find any new good or sufficient ground to enlarge the applicant on bail.

This repeat application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 18.10.2023.
Rks.