

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42008 of 2023

Applicant :- Intezar

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

Counsel for Applicant :- Sudhir Kumar Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Sudhir Kumar Agarwal, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Intezar seeking his enlargement on bail in Case Crime No.230 of 2013, under Sections 363, 366, 376 IPC and Section 4 Pocso Act, police station Kandhla, district Muzaffar Nagar, during the pendency of trial.

Perused the record.

At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon the first informant-opposite party-2 on 19.09.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party-2 to oppose the application for bail.

Learned counsel for the applicant submits that after completion of statutory investigation of aforementioned case crime number, Investigating Officer submitted charge-sheet dated 17.08.2013, whereby one of the named accused, namely, Inam was charge-sheeted under Sections 363, 366, 376 IPC and Section 3/4 Pocso Act. However, though the applicant is named in the first information report but he was exculpated by the Investigating Officer as no such material emerged during the course of investigation establishing the complicity of applicant in the crime in question.

After submission of charge-sheet, cognizance was taken upon 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. The trial commenced. During the course of trial, Hanif (first informant) deposed before the court below as PW-1 and Afsana (prosecutrix) also deposed before the court below as PW-2. The complicity of other non charge-sheeted accused surfaced in the statement of aforesaid witnesses. Accordingly, an application under Section 319 CrPC was filed

by the prosecutrix praying therein that since complicity of applicant along with three other named but non charge-sheeted accused, namely, Shahid, Bhoora and Islam is also established in the crime in question therefore, they be also summoned to face trial. The said application came to be allowed by court below vide order dated 05.07.2022. Accordingly, applicant along with other co-accused were summoned by court below in aforementioned Sessions trial.

At the very outset, the learned counsel for applicant submits that though applicant is a named accused but he was exculpated by the Investigating Officer as no such material emerged during the course of investigation establishing the complicity of applicant in the crime in question therefore he is liable to be enlarged on bail.

It is next contended that similarly situate and circumstanced co-accused Shahid has already been enlarged on bail by this Court vide order dated 24.02.2023 passed in Criminal Misc. Bail Application No.51514 of 2022 (Shahid Vs. State of U.P. & 3 others). For ready reference, the order dated 24.02.2023 is reproduced herein-under :-

"By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 230 of 2013 at Police Station- Kandhala, District- Shamli, under Sections 363, 366, 376 IPC and Section 3/4 POCSO Act. The applicant is in jail since 16.10.2022.

The bail application of the applicant was rejected by learned trial court on 14.10.2022.

The following arguments made by Shri Azhar Ahmad, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Sunil Kumar Srivastava, learned AGA from the record, entitle the applicant for grant of bail:

1. The victim was falsely depicted as a minor in the FIR only to implicate the applicant under the stringent provisions of the POCSO Act and cause his imprisonment.

2. The age of the victim as set out in the prosecution case is assailed in light of the law laid down by this Court in Monish Vs. State of U.P. and others (Criminal Misc. Bail Application No. 55026 of 2021) :

A. The age of the victim as depicted in the school records was also got falsely recorded by the victim's parents to give her an advantage in life. The school records are not reliable.

B. The medical report drawn up to determine the age of the victim opines that she is between 20 years of age.

3. The applicant was neither named by the victim in the statement under Section 161 Cr.P.C. or Section 164 Cr.P.C.

4. After the investigation the applicant was not chargesheeted by the police authorities as he was not found culprit.

5. The applicant was nominated by the victim as an after thought at the behest of her parents to save the failing prosecution case and deflect the attention from her conduct.

6. It is contended that the applicant has always cooperated with the investigations and had joined the trial. The applicant is innocent.

7. The trial is moving at a snail's pace and shows no sign of early conclusion. The applicant cannot be faulted for the delay in the trial.

8. Inordinate delay in concluding trial has lead to virtually an indefinite imprisonment of the applicant.

9. The right of the applicant to speedy trial has been violated.

10. The applicant does not have any criminal history apart from the instant case.

11. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the court proceedings. There is no possibility of his influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant- Shahid be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted."

On the above premise, it is contended by the learned counsel for applicant that the case of present applicant is similar and identical to that of co-accused Shahid. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforesaid co-accused so as to deny him bail. On the basis of above, he contends that in view of above and for the facts and reasons recorded in the bail order of aforesaid co-accused, the applicant is also liable to be enlarged on bail on the ground of parity.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in custody since 28.08.2023. As such, he has undergone more than two months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. 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.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the complicity of applicant in the crime in question has emerged as per deposition of PW-1 (first informant) and PW-2 (prosecutrix) before court below, therefore applicant does not deserve any indulgence by this Court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that similarly situate and circumstanced co-accused Shahid has already been enlarged on bail by this Court, the learned A.G.A. could not point out any such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforementioned bailed out co-accused Shahid so as to deny bail to the present applicant, the clean antecedents of the applicant, the period of incarceration undergone therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant **Intezar**, involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to

appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(iv) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The trial court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 3.11.2023.

Rks.