

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47887 of 2023

Applicant :- Mustakeem

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

Counsel for Applicant :- Harshit Pathak, Anurag Pathak

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Harshit Pathak, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Mustakeem seeking his enlargement on bail in Case Crime No.233 of 2022, under Sections 376, 506 IPC and Sections 5L/6 Pocso Act, police station Kotwali Mandi, district Saharanpur, during the pendency of trial i.e. Sessions Trial No.2524 of 2022 (State Vs. Mustakeem) under Sections 376, 506 IPC and Sections 5L/6 Pocso Act now pending in the court of Additional District & Sessions Judge/Special Judge (Pocso Act), Court No.13, Saharanpur.

At the very outset, the learned A.G.A. submits that notice of present application for bail has been served upon first informant-opposite party-2 on 02.11.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party-2 to oppose this application for bail.

Perused the record.

Record shows that a first information report dated 02.08.2022 was lodged by first informant, namely, Raees Ahmad (brother of the prosecutrix) which was registered as Case Crime No.0233 of 2022, under Sections 376, 313, 506 IPC, police station Kotwali Mandi, district Saharanpur. In the aforesaid first information report, two persons namely, Mustakeem (applicant herein) and Gulsher have been nominated as named accused.

Learned counsel for applicant contends that after completion of statutory investigation of aforementioned Case Crime number, Investigating Officer submitted the charge-sheet dated 18.09.2022, whereby applicant-Mustakeem alone was charge-sheeted under Sections 376, 506 IPC and Sections 5L/6 Pocso Act. After submission of charge-sheet, cognizance was taken upon same by the concerned Special Judge. The trial commenced. During course of trial, Raees Ahmad (first

informant) deposed before the court below as PW-1 and Shaniya (prosecutrix) also deposed before the court below as PW-2. However, both have not supported the FIR and have been declared hostile by the prosecution itself. The copy of statements-in-chief/examination-in-chief of the aforesaid prosecution witnesses have been brought on record as Annexures-'7' and '8' to the affidavit filed in support of present applicant for bail. On the above premise, he submits that once the prosecutrix has herself not supported the FIR therefore, no useful purpose shall be served in prolonging the custodial arrest of applicant. He therefore, contends that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 14.08.2022. As such, he has undergone approximately one year and three 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. Since the statements of the first informant and the prosecutrix itself have been recorded and they have not supported the FIR, it cannot be said that in case applicant is enlarged on bail he shall terrorize the witnesses or hamper the course of trial. As such, no useful purpose shall be served in prolonging the custodial arrest of applicant. He, therefore, submits 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 simply on the basis of statements of PW-1 and PW-2 i.e. the first informant and the prosecutrix, it cannot be inferred that applicant is innocent. He further submits that the prosecutrix is a girl of tender age as she was below 16 years of age on the date of occurrence as per her date of birth recorded in the record of the institution first attended by her on the date of occurrence, therefore no indulgence be granted by this Court in favour of applicant. 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, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that the first informant and the prosecutrix in their depositions before the court below as PW-1 and PW-2 have not supported the FIR therefore have been declared hostile by the prosecution itself as is evident from their statements copy of which are on record as Annexures-'7' and '8' to the affidavit filed in support

of present application for bail, further more once the statements of the first informant and the prosecutrix have itself been recorded who have not supported the FIR, it cannot be said that in case applicant is enlarged on bail he shall terrorize the witnesses or hamper the course of trial, therefore irrespective of the objections raised by the learned A.G.A. to the present application for bail this Court finds that no useful purpose shall be served in prolonging the custodial arrest of the applicant, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out from the record any such circumstance necessitating the custodial arrest of the applicant during the pendency of trial, the clean antecedents of 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 **Mustakeem**, 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 :- 7.12.2023.

Rks.