

Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51948 of 2023

Applicant :- Yameen

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashok Kumar Singh Bais

Counsel for Opposite Party :- G.A.

Hon'ble Sameer Jain,J.

1. Heard Sri A.K.S. Bais, learned counsel for the applicant and Dr. S.B. Maurya, learned AGA-I for the State.
2. The instant bail application has been filed seeking release of the applicant on bail in Case Crime No. 363 of 2014, under Sections 376D, 506 IPC, Police Station Shahpur, District Muzaffar Nagar during pendency of the trial.
3. FIR of the present case was lodged against four persons (non applicant) and one unknown persons under Sections 376D, 506 IPC on 15.09.2014 and according to the FIR nominated accused persons along with his unknown associates committed rape upon the informant on 24.08.2014.
4. Learned counsel for the applicant submitted that however FIR of the present case was lodged on 15.09.2014 and during investigation in the statement of the victim i.e. informant recorded under Section 164 Cr.P.C., the name of applicant was surfaced but during investigation his involvement was found false and final report was filed in favour of the applicant on 20.10.2014 but on 17.01.2015 after rejecting the final report applicant was summoned by the court concerned.
5. He further submits that however applicant was summoned on 17.01.2015 by the court concerned but he could not become aware about the summoning order as summons never served upon him. He further submits that applicant is resident of district Saharanpur whereas incident alleged to have been occurred at district Muzaffar Nagar, therefore, applicant could not become aware about the summoning order.
6. He further submits that when applicant was made accused

subsequently in the year 2022 in two cases of Section 302 IPC then he came to know that applicant is wanted in the present case and thereafter he was challaned in the present matter on 24.08.2023.

7. He further submits that on merit, applicant was neither named in the FIR nor victim i.e. informant of the case disclosed his name in her statement recorded under Section 161 Cr.P.C. and for the first time applicant was made accused through the statement of the victim recorded under Section 164 Cr.P.C. along with other accused persons.

8. He further submits that other co-accused persons namely Naseem and Zahid have already been released on bail by the co-ordinate Benches of this Court. He placed the bail orders of both co-accused persons during the course of argument, which are taken on record and collectively marked as 'A'.

9. He next submits that even when victim appeared before the trial court then she did not support her earlier version and has been declared hostile and her statement recorded by the trial court has been annexed as Annexure-10 to the affidavit filed in support of instant bail application.

10. He further submits that apart from present case applicant is having criminal history of two cases and both cases however were of Section 302 IPC and out of these two cases in one case applicant has already been released on bail and his bail order has been annexed along with instant bail application. He further submits that in another case of the applicant his bail plea is pending before this Court.

11. Per contra, learned AGA opposed the prayer for bail but could not dispute the argument on facts advanced by learned counsel for the applicant.

12. I have heard learned counsel for the parties and perused the record of the case.

13. However, it appears that applicant was challaned in the present matter after about eight years but from the record, it also reflects that in the year 2014 initially final report was submitted in favour of the applicant and he was summoned in the year 2015 but applicant is resident of district Saharanpur whereas the incident is alleged to have been occurred at district Muzaffar Nagar and applicant in the instant bail application specifically made averment

that summons issued to him never served upon him.

14. Further, as far as merit of the case is concerned, applicant was neither named in the FIR nor victim in her statement recorded under Section 161 Cr.P.C. disclosed his name and victim for the first time disclosed the name of applicant in her statement recorded under Section 164 Cr.P.C. along with other co-accused persons and other co-accused persons have already been enlarged on bail by the co-ordinate Benches of this Court and on merit case of applicant is at par with them in the light of the statement of the victim recorded under Section 164 Cr.P.C.

15. Further, victim i.e. informant of the case when appeared before the trial court then she did not support the prosecution case and was declared hostile. Further, however, applicant is having criminal history of two cases and both cases were of Section 302 IPC but out of two cases in one case he has been released on bail and with regard to another case he has filed the bail application before this Court.

16. Therefore, considering the facts and circumstances of the case discussed above, in my view, applicant is entitled to be released on bail.

17. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is **allowed**.

18. Let the applicant - **Yameen** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

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

(iii) The applicant shall not indulge in any criminal and anti-social activity.

19. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

20. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 5.12.2023

AK Pandey