

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3485 of 2023

Applicant :- Rakeem Alias Irfan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And 3 Others

Counsel for Applicant :- Santosh Kr. Yadav Warsi, Rajat Pratap Singh, Ram Lal

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Mr. Santosh Kumar Yadav 'Warsi', learned counsel for the accused-applicant, as well as learned A.G.A. for the State and perused the record.

Opposite party no. 2 is shown to have been served, however, he is not represented.

2. This bail application has been moved by the accused/applicant- **Rakeem alias Irfan** for grant of bail in Case Crime No.0248 of 2021, under Sections 363 and 376 IPC read with Section 3/4(2) of the Protection of Children from Sexual Offences Act and Sections 3(2)5A of the SC/ST Act lodged at Police Station Huzoorpur, District Bahraich, during trial.

3. Learned counsel for the accused-applicant submits that this is 2nd application for bail moved on behalf of the applicant as his first bail application was rejected on 01.11.2022 and after rejection of his first bail application, statement of the prosecutrix has been recorded before the trial Court as PW-2 and there are material contradictions in the statement of the prosecutrix with regard to identity of the victim and, it appears that the real victim of the crime has been concealed as the applicant was having relationship with the elder sister of the present victim and, it was apprehended that she would give statement in favour of the applicant and in this regard in connivance with the investigating officer the FIR as well as the whole proceedings have been done by showing the younger sister of the real victim as the prosecutrix.

4. Elaborating further, it is submitted that the applicant was having an affair with the elder sister of the victim and this relationship was not being digested by her family members and on this pretext the instant FIR has been lodged without there being any evidence or material. It is further submitted that the applicant is languishing in jail in this case since 25.08.2011 and the trial is not going to conclude in near future and till now two

prosecution witnesses have been testified. The applicant is not having any previous criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

5. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the 1st bail application of the applicant has been rejected on merits and the age of the prosecutrix, as stated in the FIR, is 14 years, while as per her educational credentials, she is aged about 16 years and keeping in view the fact that she has corroborated the factum of rape in her statements recorded under Sections 161 and 164 CrPC and also stated the same version before the trial Court when she was testified as PW-2, the applicant is not having any new ground on the basis of which he may be extended the facility of bail.

6. Having heard learned counsel for the parties and having perused the record, it is evident that since rejection of 1st bail application of the applicant by the coordinate Bench of this Court on 01.11.2022 two prosecution witnesses, including the prosecutrix, have been testified before the trial Court. The prosecutrix in her statement has fortified the allegations as stated by her in her statements recorded under Sections 161 ad 164 CrPC. *Prima facie*, there is no confusion with regard to identity of the prosecutrix and, if there is any doubt in the opinion of the applicant, the same may be addressed during the course of trial. The age of the prosecutrix is about 16 years and, keeping in view the statements given by her before the Magistrate as well as before the trial Court, I do not find any new ground to release the applicant on bail. Thus, **this 2nd application for bail moved on behalf of the applicant is also rejected.** However, the trial Court is directed to expedite the trial, if there is no legal impediment, and conclude the same within six months from today and if in this regard the case is required to be listed once in a week, the trial Court shall do the same.

7. Let a copy of this order be furnished to the trial Court for strict compliance through the Sessions Judge concerned.

8. If the trial is not concluded within the period mentioned herein before, the applicant may approach this Court for renewal of his prayer for bail.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 6.11.2023 MVS/-