

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5617 of 2023

Applicant :- Rakesh Kumar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Govt. Civil Sectr. Lko. And 3 Others

Counsel for Applicant :- Sanjay Kumar, Manoj Kumari Tiwari, Sumit Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit, filed on behalf of the applicant, is taken on record.

Learned counsel for the applicant has also provided copy of bail order of the applicant passed by the Sessions Judge, Bahraich of date 27.02.2017 in Case Crime No.2099 of 2017. The same is taken on record.

As per report submitted by the In-charge Chief Judicial Magistrate, Bahraich of date 10.05.2023, enclosing therewith report submitted by the Sub-Inspector of Police Station Kharighat, District Bahraich, the complainant/informant has been sufficiently/personally served, however, he is not represented.

2. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Rakesh Kumar** for grant of bail in Complaint Case No.0147 of 2021, under Sections 376(D,A) IPC read with Sections 5(g)/6 POCSO Act, lodged at Police Station Khairighat, District Bahraich, during trial.

4. Learned counsel for the accused-applicant, while pressing the bail application, submits that the applicant has been falsely implicated in this case and, he has not committed any offence, as claimed by the prosecution.

5. It is further submitted that the FIR of the instant case has been lodged by the brother-in-law (Sala) of the applicant alleging therein that on 15.01.2019 at about 4 p.m. the applicant and other co-accused persons have committed rape of his minor

daughter aged about 15 years and when he had gone to lodge the FIR, the same was not registered and, therefore, he moved an application under Section 156(3) CrPC. It is vehemently submitted that the real story is to the tune that the applicant is having matrimonial discorded relations with his wife and various matrimonial cases are pending between them and wife of the applicant was living with one Vinod Singh to which the applicant was having objection and the FIR of this case has been lodged only on account of discorded matrimonial relations. Highlighting further, it is submitted that one of the witnesses, namely, Abhishek is the son of the applicant and as he is living with his mother, he has been arrayed as a witness. It is vehemently submitted that though the prosecutrix in her statements recorded under Sections 161 and 164 CrPC has supported the allegation of sexual assault by the applicant but after a thorough investigation the investigating officer had submitted a closure/final report in the matter on the score that the informant of the instant case is the brother-in-law (Sala) of the applicant and the sister of the informant (wife of the applicant) is having strained relations with the applicant and a case bearing case crime no.0128 of 2018 under Sections 354, 504 and 506 IPC read with Section 7/8 POCSO Act was registered against one Vinod with whom the wife of the applicant was having illicit relationship. It is further submitted that thereafter a protest petition appears to have been moved by the informant/complainant and the same was treated as complaint and after recording statements of the informant and witnesses, including the prosecutrix under Sections 200 and 202 CrPC, the summoning order has been passed on 11.07.2022. It is vehemently submitted that allegations of the FIR were thoroughly investigated by the investigating officer and, it was found that there is no substance/merit in the allegations and a closure report was submitted. It is further submitted that the case of the prosecution has become highly doubtful as the allegations have not been found correct during the course of investigation and simply finding a prima facie case the applicant has been summoned, without there being any sufficient ground for the same. It is next submitted that the applicant is languishing in jail in this case since 16.01.2023 and criminal history of one case has been alleged against the applicant lodged vide Case Crime No.2099 of 2017 in which he has been granted bail vide order dated 27.02.2017 passed by the Sessions Judge, Bahraich 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.

6. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that age of the prosecutrix was about 16

years and, she has supported the version of sexual assault in her statements recorded under Sections 161 and 164 CrPC as well as in her statement recorded before the trial Court under Section 202 CrPC and, therefore, the applicant is not entitled to be released on bail.

7. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted fact that the informant of the instant case is brother-in-law (Sala) of the applicant. One of the prosecution witnesses, namely, Abhishek is the real son of the applicant. It also appears to be an admitted situation that the sister of the informant is the wife of the applicant and earlier a case was registered against one Vinod Kumar. Allegations had been levelled by the applicant that his wife was having illicit relationship with Vinod and since an FIR has been lodged against him, in retaliation of the same, the instant FIR has been lodged. Reliance has been placed on the order of date 11.05.2017 passed by the Sub-Divisional Officer, Bahriach and the FIR bearing case crime no.128 of 2018 lodged by Ram Singh against Sunil and Vinod Kumar. It also appears to be an admitted situation that after a thorough investigation final report was submitted and the trial Court treated the protest petition filed by the informant as a complaint and by finding a prima facie case the applicant has been summoned. It is vehemently submitted on behalf of the applicant that the trial Court has failed to record its satisfaction in order to assess the sufficiency of grounds for proceeding further. Having regard to the submissions made by the learned counsel for the applicant and keeping in view all the facts and circumstances of the case in totality in the considered opinion of this Court the facility of bail may be extended to the applicant. The applicant is languishing in jail in this case since 16.01.2023. Criminal history of one case of the applicant has been adequately explained and the presence of the applicant may be secured before the trial court by placing adequate conditions.

8. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

9. Let the accused/applicant-**Rakesh Kumar**, involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

10. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

11. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

12. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 8.11.2023

MVS/-