

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5853 of 2023

Applicant :- Ali Ahmad

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

Counsel for Applicant :- Vishnu Kumar Mishra, Dr. Shailendra Sharma, Nripendra Mishra, Shitesh Jha

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The State in its counter affidavit has filed a report of the Police Station- Murtiha, District- Bahraich, which reflects that the informant/ Opposite party No.2 has been sufficiently served, however, she is not represented.
2. Rejoinder affidavit dated 18.10.2023 has been filed by learned counsel for the applicant and the same is taken on record.
3. Heard Shri Shitesh Jha, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Ali Ahmad** for grant of bail, in Case Crime No. 337/2022, under Sections 363, 342, 376(D), 506 I.P.C. & Section 5 (m)/6 POCSO Act, Police Station- Murtiha, District- Bahraich, during trial.
5. 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.
6. It is further submitted that the name of the instant applicant has been dragged in this case only on account of the fact that he is/ was having good relations with co-accused Dinesh Kumar, whose father has moved an application under Section 156 (3) Cr.P.C against the informant and her other associates and only on account of same enmity, the applicant has also been named in the F.I.R lodged by the informant on false, concocted and improbable facts.

7. It is also submitted that in the F.I.R lodged on 26.11.2022, the informant has alleged that the prosecutrix/ victim has been kidnapped by the applicant and other two co-accused persons in a four wheeler. The prosecutrix is shown to have been recovered on 04.11.2022 from a railway station and her medical examination was conducted wherein no abnormality or injury of any kind has been found.

8. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the prosecutrix in her statement recorded under Section 161 Cr.P.C. has alleged that she was kidnapped by co-accused Dinesh and Rakesh and one unknown person, however, the prosecutrix has not named the applicant in her statement recorded under Section 161 Cr.P.C., it is in the statement of the prosecutrix recorded under Section 164 Cr.P.C., the name of applicant has surfaced and allegation of rape has been levelled under the pressure of her family members.

9. It is also submitted that identically placed co-accused, namely, Dinesh Kumar has been granted bail by a co-ordinate Bench of this Court vide order dated 27.03.2023 passed in Criminal Misc. Bail Application No. 2702 of 2023. The applicant is in jail in this case since 10.01.2023 and criminal history of two cases has been alleged against the applicant, however, the same is explained in para No.34 of the rejoinder affidavit filed today. However, in one of such cases pertaining Section 376 (D) I.P.C. of Police Station- Kotwali Nagar, District- Bahraich, a Closure Report/ Final Report has been submitted as the allegations therein were found false and with regard to second case pertaining to minor penal offences, the applicant has been granted bail and copy of the bail order pertaining to that has been placed as RA-1 to the rejoinder affidavit. There is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

10. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that though the age of the prosecutrix as per the ossification test has been assessed as 13 years. Various submissions have been raised in order to show that when the father of the co-accused Dinesh Kumar has moved an application under Section 156 (3) Cr.P.C against the

informant, this false case has been cooked by using her daughter. Identically placed co-accused, namely, Dinesh Kumar has been granted bail by a co-ordinate Bench of this Court. No abnormality has been found in the medical examination report of the prosecutrix. Criminal history of two cases has been adequately explained. Applicant is in jail in this case since 10.01.2023. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and 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**.

13. Let the accused/applicant- **Ali Ahmad** 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.

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

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

16. 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 of this Court on the merits of the case.

Order Date :- 26.10.2023

Gurpreet Singh