

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7508 of 2023

Applicant :- Prashant Awasthi Alias Tankal

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

Counsel for Applicant :- Preeti Yadav,Narvind Kumar Singh,Vineet Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed on behalf of the applicant is taken on record.
2. The State in its counter affidavit has enclosed a communication sent by the S.H.O. of the Police Station Kotwali Sahar, District Hardoi with regard to service on opposite party no.2/complainant. Thus opposite party no.2/complainant appears to have been sufficiently served, however, he is not represented.
3. Heard Shri Vineet Kumar Mishra, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This second bail application has been moved by the accused/applicant - **Prashant Awasthi Alias Tankal** for grant of bail, in Case Crime No.465 of 2022, under Section 376AB I.P.C. and Section 5L/6 P.O.C.S.O. Act, Police Station Kotwali Sahar, District Hardoi, during trial as his first bail application has been rejected vide order dated 28.11.2022 passed in Criminal Misc. Bail Application No.11220 of 2022 by a Coordinate Bench of this Court.
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 incident as shown to have occurred is highly improbable and could not be believed on the touchstone of probability. Elaborating further, it is submitted that the name of the applicant has been dragged into this case on account of previous enmity. The F.I.R. is delayed and casts a

cloud of suspicion over the whole prosecution story.

7. It is also submitted that even in the F.I.R. lodged after much deliberations with a delay of 3 days, there was no whisper about commission of rape and allegations were confined to molestation as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C., she has not stated commission of rape and only narrated that she was overpowered by the applicant and he had clicked her nude photographs and also misbehaved/molested her and it was in the statement of the prosecutrix recorded under Section 164 Cr.P.C. on 16.06.2022 for the very first time she had stated about commission of rape by the applicant.

8. It is vehemently submitted that the allegations as levelled by the prosecutrix in her statement recorded under Section 164 Cr.P.C. are belied by the medical examination report, wherein no injury of any kind or abnormality has been noticed on her person and so much so even her hymen has been found intact and it is apparent and evident that by using a girl of very young age, the applicant has been falsely implicated.

9. It is vehemently submitted that when the prosecutrix is specifically stating that she was raped by the applicant in its real sense, no injury on the private part or anywhere on the person of the prosecutrix of about 12 years of age raises a cloud of suspicion over the whole incident as stated by the prosecutrix.

10. While referring to the CCTV footage description of which has been brought on record along with some photographs, it is stated that at the relevant time, prosecutrix is shown in the CCTV cameras installed at the house of a neighbour and therefore, whole story of commission of rape is a written script in order to falsely implicate the applicant.

11. It is further submitted that though as per her educational credentials the date of birth of the prosecutrix is shown as 15.07.2011, however, the same may not be deemed as conclusive and her age assessed on the basis of radiological examination would also not be relevant on the score that commission of rape is itself doubtful. The statement of three prosecution witnesses including prosecutrix have been recorded in order to show various discrepancies emerging in their statements.

12. It is also submitted that applicant is in jail in this case since 15.06.2022 and till now only three prosecution witnesses have been testified before the trial court and the pace with which the

trial is going on before the trial court, the same may not conclude in near future. Thus there are substantial change in circumstances since rejection of first bail application of the applicant and the 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.

13. Learned A.G.A. for the State vehemently opposes the prayer of bail of the applicant on the ground that the applicant has committed heinous offence and the age of the prosecutrix as is evident from the record is about 11-12 years at the date and time of the alleged incident. She has fortified the allegation of rape in her statement recorded under Section 164 Cr.P.C. The delay in lodging the F.I.R. had occurred due to the fact that the prosecutrix was of very tender age and she was apprehended and was also intimidated by the applicant and had narrated the whole story to her aunt and it was thereafter the F.I.R. could be lodged and the statement given by her should be analyzed/appreciated in the background of the fact that the age of the prosecutrix is about 11-12 years and she is not expected to tell the whole story in verbatim moreover, she has also corroborated the whole incident of rape in her statement recorded before the trial court as P.W.-1 and having regard to the nature of offence committed by the applicant with a girl of very tender age, he is not entitled to be released on bail.

14. Having heard learned counsel for the parties and having perused the record, it is evident that age of the prosecutrix as per her educational credential is coming 11 years at the date and time of the alleged incident. The F.I.R. of this case has been lodged by father of the prosecutrix and at first she had narrated the whole story to her aunt and in her statement recorded by the investigating officer, she has used the word that the applicant had done '*badtamijee*' with her after undressing her completely while in her statement recorded under Section 164 Cr.P.C., she has specifically stated that she was raped by the applicant by inserting his organ in her vagina by which she felt tremendous amount of pain. Though hymen of the prosecutrix has been found intact, however, mere presence of the hymen, statement of the prosecutrix, who is of very tender age, may not be doubted more so when no proof has been placed on record with regard to any enmity. The prosecutrix has also corroborated the factum of rape in her statement recorded before the trial court. Learned counsel for the applicant has relied on CCTV footages, however, it has been admitted to the prosecutrix in her statement recorded before the trial court that these cameras, whereby CCTV footage have been collected were installed after the incident. The prosecutrix was also medically examined after

four days of the incident. The Coordinate Bench of this Court while rejecting first bail application of the applicant has not fixed any time frame for culmination of the trial and moreover three material witnesses have already been examined before the trial court including the prosecutrix. Thus the trial may be at the verge of concluding stage.

15. Thus having regard to all the facts and circumstances of this case and evidence available on record against the applicant, I do not find any change in circumstances since rejection of first bail application of the applicant. Thus this second bail application moved on behalf of applicant - **Prashant Awasthi Alias Tankal** is hereby **rejected**.

16. Mere rejection of the prayer of bail of the applicant shall not exonerate the prosecution of its liability to produce the remaining prosecution witnesses before the trial court on each and every date of such listing and the trial court shall also make all out efforts to conclude the trial within the next six months and if the trial is not concluding within the next six months, wherein the applicant is not privy, the prayer of bail may be renewed before this Court again by filing another bail application.

17. 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.

18. Office is directed to immediately send a copy of the instant order to the trial court concerned through the Sessions Judge concerned for strict compliance.

Order Date :- 5.12.2023

Anupam S/-