

**Court No. - 14**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 8139 of 2023

**Applicant :-** Raju Alias Irfan

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

**Counsel for Applicant :-** Prashant Dubey

**Counsel for Opposite Party :-** G.A., Chhote Lal Yadav, Sunil Kumar

**Hon'ble Mohd. Faiz Alam Khan, J.**

1. Heard learned counsel for the accused/applicant and learned counsel for the complainant/ opposite party no.2 as well as learned A.G.A. for the State and perused the record.
2. This second bail application has been moved by the accused/applicant- **Raju @ Irfan** for grant of bail, in Case Crime No. 139 of 2022, under Sections 313, 376, 500, 504, 506, 120-B IPC and 5/6 POCSO Act, & Section 67 Information Technology Act, Police Station Tarun, District Faizabad/ Ayodhya, during trial, as his first bail application has been rejected by a Coordinate Bench of this Court, vide order dated 02.12.2022 passed in Crl. Misc. Bail Application No. 14121 of 2022.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the applicant has not committed any offence as claimed by the prosecution.
4. It is next submitted that the FIR of the instant case has been lodged by the father of the victim against the applicant and co-accused Jitendra Kumar alleging therein that in the month of May, 2017 the victim has acquainted with the applicant and he on the pretext of marrying started sexually exploiting her and also clicked obscene photographs and when she did not concede to his ill intention made those photographs viral. It is also stated that the applicant had sent obscene photographs to various relatives of the informant and also to the would be in-laws of the prosecutrix. The prosecutrix in her statements recorded under Sections 161 and 164 Cr.P.C. has corroborated the allegation as levelled in the FIR.
5. Learned counsel for the applicant while referring the above

facts submits that it is admitted to the prosecutrix that she was consistently cohabiting with the applicant since 2017, however, it has been alleged that her consent has been obtained on the pretext of extending false promise of marriage and thereafter when the prosecutrix resisted he started sending her obscene photographs to her family members including her to be in-laws.

6. It is vehemently submitted that no photograph of any kind has been recovered either from the possession or from the mobile phone of the applicant and thus the story of sending that photograph has been cooked up in order to aggravate the gravity of offence.

7. It is also submitted that First Bail Application of the applicant was rejected on 2.12.2022, however, while denying the facility of bail the Court has directed the trial court to proceed with the trial and record the statement of the witnesses of fact within the period of 5 months. It is submitted that the statement of the informant/ prosecutrix has been recorded before the trial court and the statement of one more prosecution witness Dr. Alankrita has also been recorded and now since the 'star witnesses' of the crime has been testified before the trial court, there is no apprehension that the applicant, if facility of bail is extended may influence the prosecution witnesses of the fact. The applicant is in jail in this case since 19.06.2022 and he is not having any criminal history and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned counsel appearing for complainant/ informant vehemently opposes the prayer of bail of the applicant on the ground that 5 far long years the prosecutrix has been subjected to sexual exploitation and applicant has also made obscene photographs of prosecutrix viral and the first bail application of the applicant has already been rejected on merits and there is no change in circumstances since the rejection of first bail application of the applicant. Thus second bail application is also liable to be rejected.

9. Learned AGA also opposes the prayer of bail of the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is transpired that the first bail application of the applicant was rejected on 2.12.2022 and almost ten months have elapsed since then. While rejecting the first bail application a direction was given simultaneously with regard to recording of statement of all witnesses of the fact. It is informed that the informant and prosecutrix (witnesses of the

fact) have been examined before the trial court. Admittedly, the prosecutrix has stated in her statements that she had met with the applicant in the year 2017 in a marriage function and they entered into a relationship, however some obscene photographs are said to have been clicked by the applicant and it is alleged that on the pretext of making them viral the applicant has sexually assaulted the prosecutrix for 5 long years. The defence of the applicant appears to be that no obscene photographs or video has been recovered from his possession or from his mobile phone and in the counter affidavit filed by State as well as by the complainant no such photograph has been filed. It is also submitted that at the time of lodging of FIR the age of the prosecutrix was more than 22 years and even if the allegation that in the year 2017 she was at first sexually assaulted are taken into cognizance she at that point of time was at the verge of majority. The period of detention has already undergone by the applicant coupled with the fact that the condition placed by the order dated 2.12.2022 with regard to the examination of all witnesses of fact and the quality of evidence/ material available against the applicant, in considered opinion of this Court shall amount to substantial change in circumstances since the rejection of first bail application of the applicant, more-so when the medical report of the prosecutrix is clean. In result the second bail application moved on behalf of the applicant is accepted and is **allowed**.

11. Let the applicant- **Raju @ Irfan** involved in the aforesaid case be released on bail on 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.

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

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

14. Observations made herein-above are only for the purpose of

disposal of bail application and the same shall not have any bearing on the trial of the case.

**Order Date :- 17.10.2023**

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