

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10027 of 2023

Applicant :- Faisal Ansari

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

Counsel for Applicant :- Shyam Lal

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. This is third bail application moved on behalf of the applicant as the first two bail applications have been rejected by a coordinate Bench of this Court, however, the Hon'ble Judge who rejected the first two bail applications of the applicant has been transferred to another High Court and it is in this scenario, this third application has been placed before this Court.

2. Heard Shri Vinod Kumar holding brief of Sri Shyam Lal Dhanurdhari, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. The State in its counter affidavit has placed on record as CA-1 the information given to respondent no.2/informant, however, the informant is not represented.

4. This bail application has been moved by the accused/applicant-Faisal Ansari for grant of bail, in Case Crime No. 0453 of 2021, under Sections 376-D, 307, 506 IPC, 3/4 of Protection of Children from Sexual Offences Act, 2012 amended as 376-D, 323, 506 IPC and 5/6 of Protection of Children from Sexual Offences Act, 2012, Police Station Dewa, District Barabanki, during trial.

5. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and only on account of political enmity the FIR has been lodged by the informant at the behest of the village pradhan with whom the family members of the applicant are inimical.

6. It is further submitted that the story, as narrated by the prosecutrix in the F.I.R. is patently false, concocted and could not be believed. It is further submitted that after lodging of the FIR, statement of victim was recorded under Section 161 Cr.P.C. wherein she did not impute any allegation against the

applicant and even the allegation of *marpeet* with village pradhan-Shobhan Singh Yadav was attributed to the co-accused Danish and it is only with regard to this incident of *marpeet* the village pradhan Shobhan Singh Yadav has used the prosecutrix to lodge a false and concocted FIR of sexual assault against the applicant.

7. Elaborating further, it is submitted that after many days of the recording of the statement under Section 161 Cr.P.C., the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein for the very first time she has alleged allegation of rape to the applicant as well as to the co-accused Danish. However, in both her statements, the presence of village Pradhan Shobhan Singh Yadav is shown which prima facie fortifies the fact that the village pradhan was instrumental in lodging a false FIR against the applicant.

8. It is also submitted that allegations of sexual assault as levelled in the statement of victim recorded under Section 164 Cr.P.C. are not corroborated by the medical evidence as no injury or no abnormality of any kind has been noticed therein. It is also submitted that age of the victim on the date and time of the incident is shown as 14 years, however, the same is not significant in the background of the fact that the incident of sexual assault is itself in grave doubt and could not be believed. It is also submitted that the co-accused Danish to whom the role of assault on village pradhan Shobhan Singh Yadav has been assigned as well as committing rape on the prosecutrix, has been released on bail by a coordinate bench of this Court vide order dated 27.07.2022 passed in Criminal Misc Bail Application No. 781 of 2022 and the role of applicant is much lesser than him.

9. It is next submitted that applicant is languishing in jail in this case since 09.01.2022 and he is not having any criminal history 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.

10. Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that his earlier two bail applications have been rejected by a coordinate Bench of this Court and no new ground is emerging in favour of the applicant as the second bail application was rejected after grant of bail to the co-accused Danish.

11. Having heard learned counsel for the parties and having perused the record, it is evident that after lodging of the FIR wherein commission of sexual assault has been attributed to the

applicant and co-accused Danish, the statement of prosecutrix was recorded under Section 161 Cr.P.C. wherein she did not impute any allegation against the applicant and the role of assault was also levelled against co-accused Danish, however, in the statement recorded under Section 164 Cr.P.C for the very first time the sexual assault has been levelled to the accused applicant. Various submissions have been raised by learned counsel for applicant in order to show that a *marpeet* had occurred between the co-accused Danish and the village Pradhan Shobhan Singh Yadav and the applicant has been dragged in this case only on account of the fact that he was having good relations with co-accused Danish. It may not be disputed that co-accused Danish to whom identical role, so far as the commission of rape is concerned, has been assigned and the role of *marpeet* has been assigned which is not the case with the accused applicant, has been granted bail by a coordinate bench of this Court. Nothing has been brought in the notice of this Court which may suggest that the order whereby the facility of the bail was extended to the co-accused Danish has been challenged at any higher forum or the same has been cancelled by the court concerned. Applicant is in jail in this case since 09.01.2022. He is also not having any criminal history.

12. Thus, keeping in view all the facts and circumstances of the case, specially the period of detention of the applicant coupled with the fact that identical co-accused has been granted bail and that order has not been challenged at any higher forum makes out a substantial change in the circumstances since rejection of the first two bail applications of the applicant and on the principle of parity, the same facility may also be extended to the applicant. This third bail application moved on behalf of the applicant is allowed.

13. Let the **accused/applicant- Faisal Ansari** 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 make any contact directly or indirectly with the informant, prosecutrix or any of the family members of the informant or prosecutrix or through any social platform e.g. Facebook, Whatsapp, Instagram etc.

(ii) The violation of this condition alone shall be sufficient ground for the trial court to cancel the facility of bail granted by this Court to the applicant.

(iii) The applicant shall not tamper with the prosecution

evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

(v) 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 on the merits of the case.

Order Date :- 26.10.2023

Renu/-