

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11787 of 2021

Applicant :- Vikash Yadav Second Bail Application

Opposite Party :- State Of U.P. And 3 Ors.

Counsel for Applicant :- Anoop Kumar Upadhyay, Devesh Shukla, Omkar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Having regard to the office report dated 23.12.2021, the opposite party No.2 is stated to have been served, however, he is not represented.
2. Heard Shri Suraj Lal Verma, Advocate holding brief for Shri Devesh Shukla, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This second bail application has been moved by the accused/applicant - **Vikash Yadav** for grant of bail, in Case Crime No.196/2017, under Sections 376(D), 307/34, 506, 324, 457 I.P.C. & Section 3/4 POCSO Act, 2012, Police Station- Jethwara, District- Pratapgarh, 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 the falsity of the allegation of commission of rape may be inferred from the fact that no *spermatozoa* has been found in the pathological examination of the slides prepared of the sample taken from the prosecutrix.
5. It is further submitted that the medical report of the victim relied on by the prosecution is highly suspicious and could not be believed having regard to the manipulation made therein and therefore, it appears that these injuries have been manufactured with the help of the doctor.
6. It is also submitted that the occurrence as shown by the prosecution is highly improbable and could not be believed. Moreover, identically placed co-accused, namely, Amit has been granted bail by the trial Court vide order dated 08.04.2021 passed in Bail Application No.714 of 2021. The applicant is detained in prison in this case since 10.07.2017 and trial is still at its primitive stage and the same is not going to conclude in

near future. The applicant is not having any criminal antecedent 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.

7. Learned A.G.A. appearing for the State, on the other hand, while drawing the attention of this Court towards the medical examination report of the prosecutrix submits that the prosecutrix was not only subjected to rape, but has also been assaulted with knife and the hymen of the prosecutrix was also found torn. Thus, having regard to the nature of injury sustained by the prosecutrix and seriousness of the offence, the applicant is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that in the first information report which has been lodged by the father of the prosecutrix on his arrival from Allahabad (Now known as Prayagraj), allegation of assaulting the prosecutrix as well as of commission of rape has been levelled. In her statement recorded by the prosecutrix under Sections 161 and 164 Cr.P.C., the commission of rape as well as causing of injuries with the knife has been attributed to the instant applicant. The internal medical examination of the prosecutrix would reflect that a tear has also been found in her hymen. So far as the external examination of the prosecutrix is concerned, as many as four incised wounds have been found. Three of such wounds have been found on the head and neck of the prosecutrix. Though, the applicant appears to be in detention in this case for the last six years, but having regard to the seriousness of the allegations and the fact that the oral allegations are prima facie finding corroboration with the medical evidence, I do not find any good ground on the basis of which the applicant may be granted the facility of bail. Thus, for the reasons mentioned hereinbefore, the second bail application moved on behalf of applicant - **Vikash Yadav** is hereby **rejected**.

9. Before parting, it would be necessary to highlight that the applicant is in jail in this case since 10.07.2017 and the trial appears to be in its primitive stage without there being any reason or justification. It is to be understood that the process of adjudication by itself may not be permitted to act as punishment, as the punishment could only be imposed after holding an accused guilty, more so, when he is carrying a presumption of innocence. Thus, in order to culminate the trial at the earliest, the trial Court is directed to fix this case at least twice a week, if there is no legal impediment. The responsibility of producing prosecution witnesses on all such dates whereon the case would be listed before the trial Court would be of the

Superintendent of Police, Pratapgarh, without fail.

10. A copy of this order be sent to the trial Court through the Sessions Judge concerned as well as to the SP/ SSP, Pratapgarh for strict compliance.

11. It is observed that any deviation from the directions given by this Court in order to culminate the trial at the earliest would be taken very seriously. The trial Court in all probability would make all out efforts to conclude the trial within **eight months from today** without granting unnecessary adjournments to either of the parties.

12. The Sessions Judge concerned shall also assess the progress of this case in the monthly meetings of the Judicial Officers.

Order Date :- 27.10.2023

Gurpreet Singh