

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11559 of 2022

Applicant :- Jogindar Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home
Lucknow

Counsel for Applicant :- Dinesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed by the applicant is taken on record.
2. Heard learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Jogindar Yadav** for grant of bail, in Case Crime No. 1109 of 2014, under Sections 376D, 323,504,506,34 IPC, Police Station Rupaideeha, District Bahraich, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that earlier the applicant was granted bail in this case vide order dated 23.4.2015 passed by a coordinate bench of this Court in Bail No. 2996 of 2015 and the applicant was released on bail. However, after submission of the chargesheet amongst other penal provisions under Sections 376D, 34 IPC, the applicant again appeared before the trial court and vide order dated 14.9.2021, his prayer for bail was accepted under Sections 376D, 323,504,506 and 34 IPC. It is also submitted that both the bail orders have been placed as Annexure No. 5 to the bail application and Annexure No. 2 to the rejoinder affidavit dated 12.10.2023.
6. It is further submitted that it is only on account of non-appearance of the applicant after being released on bail vide order dated 14.9.2021 passed by the trial court, the applicant has again been detained in prison and since 12.6.2022, he is in jail.
7. It is also submitted that the merit of the case has been

touched upon by the coordinate Bench of this Court as well as by the trial court while releasing the applicant on bail and it is only on account of non-presence of the applicant before the trial court on some dates, he is in jail for almost one and a half years.

8. It is further submitted that the applicant is not having any criminal antecedents and it is undertaken that he will remain present before the trial court on each and every occasion, on which his presence would be required and would not seek adjournment, especially when the prosecution witnesses would be in attendance. Charge sheet in the matter has already been filed 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.

9. Learned A.G.A., on the other hand, submits that the applicant is an absconder and therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the applicant has been granted bail under Section 376 IPC as well as under Section 376D IPC amongst other penal provisions by an order passed by the coordinate Bench of this Court as well as by the trial court. The bail orders with regard to the same have been placed on record. After being released on bail by the trial court with regard to the offence under Section 376D IPC and other penal provisions, the applicant did not appear before the trial court and marking his absence, coercive process has been issued against him and in compliance with the same, he has been arrested and lodged in jail on 12.6.2022. The applicant has been granted bail by the coordinate Bench of this Court as well as by the trial court on merits and it is simply on account of non-presence of the applicant before the trial court, he is in jail for one and a half years. The applicant is in jail in this case since 12.6.2022 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

11. In the considered opinion of this Court, the length of the incarceration of the applicant after being released on bail by the trial court in added sections 376D and 34 IPC, would itself be sufficient to exercise discretion in favour of the applicant. In result, the bail application moved on behalf of the applicant is **allowed**.

12. Let the applicant- **Jogindar Yadav** involved in the aforesaid case be released on bail on furnishing a personal bond with two heavy 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.

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

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

15. 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 :- 5.12.2023

Shravan