

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10811 of 2023

Applicant :- Shadab

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home, Civil Sectt. U.P. Lko. And Others

Counsel for Applicant :- Sushil Kumar Singh, Mohammad Saqib Siddiqui

Counsel for Opposite Party :- G.A., Chandra Shekhar Singh Yadav

Hon'ble Mohd. Faiz Alam Khan, J.

1. Pursuant to earlier order of this Court, inquiry report submitted by the Circle Officer, Sandila, District Hardoi has been placed by the learned A.G.A. in a closed envelop for perusal of this Court. Let the same be taken on record. The learned A.G.A. is directed to place a photocopy thereof on his record.

2. Heard Mr. Sushil Kumar Singh, learned counsel for the accused-applicant, learned A.G.A. for the State, as well as Mr. Chandra Shekhar Singh Yadav, learned counsel for the complainant/opposite party no. 2, and perused the record.

3. This bail application has been moved by the accused/applicant- **Shadab** for grant of bail in Case Crime No.0197 of 2023, under Sections 328, 323, 363, 342, 506, 376(3) IPC read with Sections 5m/6 POCSO Act lodged at Police Station Sandila, District Hardoi, 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, he has not committed any offence, as claimed by the prosecution. It is further submitted that the whole story, as alleged in the FIR as well as in the statements of the prosecutrix recorded under Sections 161 and 164 CrPC, have been carved out in the background of an established political enmity.

5. Elaborating further, it is submitted that with regard to the same incident allegedly occurred on 14.02.2023, an application was moved by the informant before the Superintendent of Police, Hardoi and the same was directed to be enquired into by a senior police officer of the rank of Dy.S.P./Circle Officer and

after a thorough inquiry (after recording statements of many witnesses, including that of the prosecutrix), Keeping in view that the incident was allegedly taken place in a fair-price-shop and the same was considered to be open at the relevant time and also having regard to the location of the applicant, the allegations contained in the application, were not found truthful, however, thereafter an application under Section 156(3) CrPC was moved whereon a direction was issued for investigation of the matter and the same was investigated by the police officer of the rank of inspector and the charge-sheet has been filed without there being any material. It is vehemently submitted that co-accused of this case, namely, Mantasha Bano has approached this Court by filing Application U/s 482 No.10790 of 2023 and the coordinate Bench of this Court vide order dated 03.11.2023, while keeping the same pending, directed for further investigation to be done in the matter by a senior officer of the police i.e. circle officer.

6. It is vehemently submitted that after inquiry made by the circle officer of the police wherein the allegations were not found truthful and having regard to the order dated 03.11.2023 passed by the coordinate Bench wherein further investigation has been directed, the whole prosecution case has become doubtful and the allegations are yet to be finally investigated by a senior officer of the police (of the rank of Dy.S.P./C.O) in compliance of the order dated 03.11.2023 passed by the coordinate Bench, thus, the same may not be deemed as conclusive. It is further submitted that though the prosecutrix is of tender age, but the same is immaterial in this case as the whole incident is under the cloud of suspicion and, moreover, the medical evidence is also not in support of oral testimony. The applicant is languishing in jail in this case since 19.06.2023. He has cooperated in the investigation and undertakes that he will cooperate in the further investigation also and will remain present before the investigating officer as and when his presence is required. Criminal history of one case has been alleged against the applicant in which he has been granted bail 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., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

8. Learned counsel for the complainant/opposite party no. 2 vehemently opposes the bail plea of the applicant on the ground that earlier only an inquiry was made by the circle officer while,

inspector of police, after passing of the order under Section 156(3) CrPC, has investigated the allegations and the same could not be termed as without any basis, more so, the cognizance has been taken by the trial Court and, thus, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that it appears to be an admitted situation that before lodging of the instant FIR by moving an application under Section 156 (3) CrPC, the allegations were enquired into by the senior police officer of the rank of circle officer and on various scores, highlighted in the report of the circle officer dated 06.03.2023, the same were not found truthful. In order to verify the genuineness of the copy of this report, which was filed by the applicant along with the bail application, the said inquiry report was directed to be produced before this Court and a perusal of the same will reveal that the same may not be termed as an eye-wash as the inquiry officer appears to have recorded statements of many witnesses, including the prosecutrix. The coordinate Bench of this Court, while dealing with the application under section 482 CrPC filed by the co-accused, Mantasha Bano, has directed for further investigation in the matter, keeping in view the grounds mentioned in the order. This Court is refraining itself from making any further deliberations with regard to the allegations and the counter allegations as the same may affect the trial or the outcome of the further investigation but suffice is to say that at this stage a case of bail is made out in favour of the applicant. Thus, for the reasons aforesaid, in the considered opinion of this Court facility of bail may safely be extended to the applicant, who is languishing in jail in this case since 19.06.2023 and his presence may be secured before the trial court by placing adequate conditions. Criminal history of the applicant has been adequately explained.

10. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicant-**Shadab**, 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 cooperate in the further investigation, which is being carried out in compliance of this Court's**

order.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

(iv) 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 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 16.11.2023

MVS/-