

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11588 of 2023

Applicant :- Shakeel Ahmad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko.
And 3 Others

Counsel for Applicant :- Shamshad Ahmad, Mohammad Shahzad Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Counter affidavit filed by the State is taken on record.
2. As per the communication enclosed with the counter affidavit of the State as C.A.-1 to the counter affidavit filed by the State, the complainant appears to have been served. However, he is not represented.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This second bail application has been moved by the accused/applicant- **Shakeel Ahmad** for grant of bail, in Case Crime No. 0140 of 2022, under Sections 376-AB, 511 I.P.C. and Section 6/18 POCSO Act, Police Station Ghazipur, District Lucknow, during trial, as his first bail application has been dismissed as not pressed by this Court, vide order dated 17.07.2023 passed in Criminal Misc. Bail Application No. 9736 of 2022.
5. 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.
6. It is further submitted that the informant of this case is not the eye witness of the incident and the F.I.R. has been lodged by him on the basis of the information given to him by Krishna Yadav and Arpita Singh, who stated to have visited the house in the odd hours of the night and found the prosecutrix sitting on a 'chair' in suspicious circumstances with her pant a bit lowered and the applicant was found standing beside her.
7. It is vehemently submitted that the age of the prosecutrix/victim is about 05 years and the allegations, as shown in the F.I.R. as well as in the statement of the two independent witnesses claiming themselves to be the eye witnesses of the occurrence, namely, Krishna Yadav and Arpita Singh may not be sufficient to constitute the offence under

which the charge sheet has been filed. Elaborating further, it is submitted that even if the case of the prosecution, as is emerging from the statement of the prosecutrix as well as the two witnesses, namely, Krishna Yadav and Arpita Singh, the case of only preparation may emerge, which may not be punishable in the relevant provisions of the Indian Penal Code or P.O.C.S.O. Act.

8. It is also submitted that in the statement of the prosecutrix recorded under Section 161 Cr.P.C., no allegation which may attract of any of the provisions wherein the charge sheet has been filed may attract. However, the statement of the prosecutrix under Section 164 Cr.P.C. has been recorded after a delay of 05 days of recording the statement of of the prosecutrix under Section 161 Cr.P.C., wherein for the very first time an attempt to commit sexual assault has been alleged against the applicant.

9. It is next submitted that the applicant is languishing in jail in this case since 15.03.2022 (almost 19 months) and the trial of the case has not yet started. 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., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence with a girl of very tender age and, therefore, he is not entitled to be released on bail, moreover, the incident is claimed to have been seen by two independent witnesses.

11. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that informant of this case is not the eye witness of this crime. The F.I.R. of this case has been lodged on the information provided by one Krishna Yadav and Arpita Singh, who claimed to have been in the shop at the relevant point of time and stated to have seen the prosecutrix with the victim in suspicious circumstances. The statement of the prosecutrix under Section 161 Cr.P.C. was recorded on 15.03.2022 and statement under Section 164 Cr.P.C. has been recorded on 20.03.2022. In her statement recorded under Section 161 Cr.P.C., she has not stated anything with regard to the attempt to commit sexual assault. However, after five days when her statement was recorded under Section 164 Cr.P.C., she for the very first time stated about the attempt to commit sexual assault. Applicant is languishing in jail for the last 19 months without any criminal antecedents. The prosecutrix has also not been subjected to any medical examination. The trial admittedly has not yet started.

The presence of the applicant may be secured before the trial court by placing adequate conditions. All facts mentioned above, especially the detention of applicant for 19 months and non-commencing of the trial, amounts to substantial change in the circumstances since rejection of the first bail application of the applicant.

12. 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. This second bail application is thus **allowed**.

13. Let the accused/applicant- **Shakeel Ahmad** 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 attempt to make any contact directly, indirectly or through any social media with the victim/prosecutrix, family members of the victim including the informant and the violation of this condition alone shall be a sufficient ground for the trial court to cancel the facility of bail granted by this Court.**

(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.

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 :- 1.11.2023/Praveen