

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11751 of 2023

Applicant :- Sushil Kumar

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

Counsel for Applicant :- Ashok Kumar Srivastava

Counsel for Opposite Party :- G.A., Yogendra Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Avinash Srivastava, Advocate holding brief of Shri A.K. Srivastava, learned counsel for the accused/applicant, Shri Yogendra Singh, learned counsel for the opposite party no.2/complainant/informant as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Sushil Kumar** for grant of bail, in Case Crime No. 586 of 2018, under Sections 363, 354-Kh, 342, 376, 323, 452, 504, 506 IPC & Sections 3/4 of POCSO Act, Police Station Kotwali Sadar, District Lakhimpur Kheri, during trial.

3. Learned counsel for the accused-applicant while pressing the second 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.

4. It is further submitted that this is the second bail application moved on behalf of the applicant as his first bail application was rejected on 18.3.2021. However, the Hon'ble Judge who has rejected the first bail application of the applicant has retired on superannuation.

5. It is further submitted that the applicant is in jail in this case since 15.6.2018. Thus, it has been more than 5 years and 5 months, the applicant is in jail and till now, the evidence of the prosecution has not completed before the trial court.

6. Elaborating further, it is submitted that while rejecting the first bail application of the applicant, the coordinate Bench has directed the trial court to conclude the trial expeditiously keeping in view the provisions, as contained under Section 309 CrPC. However, the trial court has failed to comply the directions issued by the coordinate Bench about two and a half

years ago and having regard to the status of the trial, it is not expected that the trial of the case may conclude in near future.

7. It is vehemently submitted that the story, as narrated in the FIR as well as in the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC, is highly concocted, fabricated and could not be believed on the touchstone of probability as it is shown that the prosecutrix/victim has been kidnapped by the applicant with the help of his parents and minor brother and sister. So much so, it is also stated that the prosecutrix/victim was taken by the applicant to his home and while locking her in a room, the rape was committed many times and thereafter, the parents of the applicant has also forced the prosecutrix/victim to sign on a piece of paper in order to show her consent to marry the applicant, which could not be believed by any prudent person.

8. It is also submitted that in support of the allegation of the commission of rape, there is only and only the untrustworthy statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC and the same is not finding any corroboration from the medical evidence as the medical report of the prosecutrix/victim is found clean and no injury or any abnormality has been found therein.

9. It is vehemently submitted that since all the witnesses of fact have been testified before the trial court, the applicant would not be in a position to influence the prosecution witnesses of fact and he also undertakes that if this Court is intending to release the applicant on bail, one of the surety would be the father of the applicant who owns agricultural land and the same shall be placed as surety before the trial court, if prosecution is having any apprehension with regard to the appearance of the applicant before the trial court.

10. It is further submitted that though the age of the prosecutrix/victim is shown as 16 years, as per her educational credentials. However, the same may not be deemed as conclusive and would be determined by the trial court in the trial, as no basis has been shown on the basis of which, the date of birth of the prosecutrix/victim has been recorded in the school records.

11. Learned A.G.A., on the other hand, opposes the prayer for bail of the applicant on the ground that the applicant has committed a heinous offence with a girl of very tender age. Thus, the applicant is not entitled to be released on bail.

12. Learned counsel for the opposite party no.2/ complainant/

informant vehemently opposes the prayer for bail of the applicant by showing that the trial before the trial court is almost completed as all the prosecution witnesses barring one has been produced by the prosecution and the forensic report would also be produced before the trial court within no time.

13. It is also submitted that the applicant is not having any new grounds and all the grounds which were available to the applicant in support of plea of bail, have been dealt with by the coordinate Bench in its order dated 18.3.2021. He has also relied on Sections 14, 29 and 30 of POCSO Act in order to show that the offence of POCSO and rape is a different class of crime which is the result of a perverse mind. It is further submitted that the case before the trial court is fixed for tomorrow for recording of the rest evidence of the prosecution.

14. Having heard learned counsel for the parties and having perused the record, it is reflected that in the FIR, the allegations have been levelled that the applicant had arrived at the house of the prosecutrix/victim along with his parents and minor brother and sister and abducted her and was taken to his home where she was confined in a room where sexual assault was committed on her by the applicant and also the parents of the applicant forced her to sign on a piece of paper in order to show her willingness to marry the applicant. The age of the prosecutrix/victim, as per her educational credentials, was about 16 years at the date and time of the alleged incident. Thus, she was minor. The defence of the applicant appears to be that his first bail application was rejected on 18.3.2021 wherein a direction was given to the trial court to conclude the trial at the earliest by adhering to the provisions contained under Section 309 CrPC. However, till now, the prosecution evidence has not been closed and it is not expected that the trial may conclude in near future. It is also the defence of the applicant that the story, as narrated in the FIR as well as in the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC, is self-contradictory and is doubtful on the score that the investigating officer has exonerated the other accused persons named in the FIR. It is also the defence of the applicant that the statements of the prosecutrix/victim are not finding corroboration with the medical evidence as no abnormality or injury of any kind has been found therein, while the prosecutrix/victim was medically examined on 13.6.2018 and the incident is shown to have occurred on 09.06.2018, the FIR could only be lodged on 12.06.2018. The objections from the side of the complainant are to the tune that all the grounds which were available to the applicant in support of plea of bail, have been considered and rejected while dealing with the first bail application of the applicant and thus, no new ground is

emerging. The trial is at the concluding stage and thus, it would not be fair at this stage of the trial, to release the applicant on bail.

15. This Court is of the considered view that in the guise of producing witnesses, an accused person/under trial who is also carrying a presumption of innocence, may not be kept behind the bars for ever and the fairness which is being pleaded in conduction of a criminal trial applies with equal force to all the stake holders appearing before the court and the same can only not be confined only to the accused or under trial. There may not be difference of opinion on the fact that the applicant is in prison in this case since 15.6.2018, meaning thereby he has spent more than 5 years and 5 months in jail, which in the considered opinion of this Court is itself sufficient enough to exercise discretion in favour of the applicant so far as the plea of bail is concerned. More so, when nothing has been brought in the knowledge of the Court which may suggest that the applicant is privy to the delay occurred in the conclusion of the trial. The apprehension, if any, of the State as well as of the complainant/informant may be satisfied/dealt with by placing adequate conditions.

16. Thus, for the reasons mentioned herein before, I am of the considered view that the detention of the applicant for more than two and a half years after rejection of his first bail application is substantial change in circumstances. Thus, this second bail application moved on behalf of the applicant is **allowed**.

17. Let the applicant- **Sushil Kumar** involved in the aforesaid case be released on bail on furnishing a personal bond with **two heavy sureties one of whom would be the father of the applicant namely, Radhe Shayam**, in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall remain present before the trial court on each and every date of listing and his personal exemption application could only be allowed, when the reasons mentioned therein are appearing to the trial court beyond the control of the applicant. At the stage of recording of the statement of the applicant under Section 313 CrPC or on any other occasion, when his presence would be required, he will remain present before the trial court and his exemption application may not be allowed, unless the reasons given therein, to the satisfaction of the court, are beyond the control of the applicant.

(ii) The applicant shall not contact the prosecutrix/victim or any

of the prosecutions witnesses cited in the chargesheet either directly or indirectly or through any social platform.

(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.

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

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

20. 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 :- 30.11.2023

Shravan