

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11829 of 2023

Applicant :- Chhote Alias Akhilesh Pandey

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

Counsel for Applicant :- Huzoor Alam Alvi, Zeeshan Alvi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Zeeshan Alvi learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This bail second application has been moved by the accused/applicant - **Chhote Alias Akhilesh Pandey** for grant of bail, in Case Crime No.0412 of 2020, under Sections 307, 376 A. B., 504, 506 I.P.C. and Section 5(M)/6 of the P.O.C.S.O. Act, Police Station Kotwali City, District Hardoi, during trial as his first bail application has been rejected vide order dated 07.12.2022 passed in Criminal Misc. Bail Application No.14310 pg 2022 by a Coordinate Bench of this Court
3. 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.
4. It is further submitted that there is material change in the circumstances since rejection of first bail application of the applicant as the prosecution witnesses, who have been testified before the trial court, have not supported the version of the prosecution and the prosecutrix, who is of very tender age, has also not identified the applicant.
5. It is also submitted that since the prosecutrix has not supported the version of the prosecution as alleged in the F.I.R. and in her statement recorded under Sections 161 and 164 Cr.P.C., conviction of the applicant would be a remote possibility. It is also submitted that identity of the accused/applicant is disputed and therefore, facility of bail be extended to the applicant more so when he is not having any criminal history.

6. It is next submitted that the applicant is in jail in this case since 12.08.2020 and the charge sheet in this case has already been filed 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. for the State vehemently opposes the prayer of bail of the applicant on the ground that first bail application of the applicant has been rejected on merits and there is no substantial change in circumstances and attention of this Court has also been drawn to Sections 29 and 30 of the P.O.C.S.O. Act in order to show that the accused of P.O.C.S.O. Act with regard to certain penal offences is required to prove its defence beyond reasonable doubt and therefore, the applicant would not be in a position to take any benefit of the hostility of the prosecution witnesses, thus he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that first bail application of the applicant has been rejected by a Coordinate Bench of this Court by passing a reasoned order. The change in circumstances since rejection of the first bail application of the applicant has been claimed on the basis that three prosecution witnesses including the prosecutrix, who have been testified before the trial court, have not supported the version of the prosecution and the prosecutrix has not identified the applicant in the court.

9. Perusal of the record would reveal that after lodging of the F.I.R., statement of the prosecutrix, who is of very tender age, was recorded under Sections 161 and 164 Cr.P.C. and in both the statements she has identified the applicant as the perpetrator of the crime. The medical report of the prosecutrix of date 07.08.2020 is also available in the counter affidavit filed by the State and perusal of the same would sufficiently demonstrate that the prosecutrix has sustained some injuries on her neck and her hymen has been found freshly torn/ruptured and fresh bleeding was also found present. Thus prima facie, the allegations, which were levelled in the F.I.R. as well as by the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C., are corroborated by the medical evidence. If Sections 29 and 30 of the P.O.C.S.O. Act are read conjointly, it would emerge that the court is bound to take presumption with regard to certain offences and once this presumption is taken, the defence of the accused is to be proved on the scale of proof beyond reasonable doubt. Admittedly the prosecution witnesses of fact have been testified before the trial court and the opportunity would be available to the applicant/accused to prove its defence on the parameter provided under Sections 29

and 30 of the P.O.C.S.O. Act, before the trial court.

10. Thus having regard to all the facts and circumstances of this case and keeping an eye on Sections 29 and 30 of the P.O.C.S.O. Act as well as on the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., I do not find any good ground to release the applicant on bail. Thus the bail application moved on behalf of applicant - **Chhote Alias Akhilesh Pandey** is hereby **rejected**.

11. However, the trial court is directed to proceed with the trial with utmost expedition and make all out efforts to conclude the same within eight months from production of a certified copy of this order before the trial court. If the trial court fails to conclude the trial within the period stipulated herein-before, the applicant may again renew his prayer of bail before this Court.

12. 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 of this Court on the merits of the case.

13. Office is directed to immediately send a copy of the instant order to the trial court concerned through the Sessions Judge concerned for strict compliance.

Order Date :- 1.11.2023

Anupam S/-