

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12029 of 2023

Applicant :- Ameen

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Govt. Of U.P. Lucknow And Others

Counsel for Applicant :- Rajesh Kumar Awasthi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder filed by learned counsel for the applicant is taken on record.
2. In the counter affidavit filed by the State, a communication was sent by the S.H.O. of the PS- Huzoorpur, Bahraich pertaining to the service on the opposite party no.2. However despite service, the opposite party no.2 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.
2. This bail application has been moved by the accused/applicant- **Ameen** for grant of bail, in Case Crime No. 463 of 2022, under Sections 376(D) IPC, Section 5(g)/6 of POCSO Act & Section 3(2)(v) of SC/ST Act, Police Station Huzoorpur, District Bahraich, during trial.
3. 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.
4. It is further submitted that the FIR of this case has been lodged on 10.12.2022 by the father of one of the victim alleging that both the victims aged about 15 years and 12 years respectively were enticed away by one Sultan who had committed rape with both the victims and the whole story was narrated by the victims to him.
5. It is further submitted that in her statement recorded under Section 161 CrPC, one of the victim (daughter of the informant) had stated about one Sultan who had taken them on his motorcycle along with his friend and had committed sexual intercourse with one victim while the other victim has imputed

allegations of rape against one Sanjay. The statements of both the victims were recorded under Section 164 CrPC wherein they alleged to have been sexually assaulted by one Sultan along with his friend. However, it is also stated by them that an associate of Sultan was sitting there with a little distance.

6. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the applicant was neither named in the FIR nor in the statements of the victims recorded under Sections 161 & 164 CrPC and it is only on the arrest of the co-accused Sultan, the name of the applicant has surfaced in his confessional statement which cannot be proved against the applicant by virtue of bar contained in Section 26 of the Indian Evidence Act.

7. It is further submitted that though both the victims were minor and having regard to the fact that they have not stated any allegation against the applicant, their tender age is not material so far as the bail of the applicant is concerned.

8. It is further submitted that the applicant is in jail in this case since 13.12.2022 and he is not having any criminal antecedents. 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 having manner on which the offence has been committed the applicant is not entitled for any relief.

10. Having heard learned counsel for the parties and having perused the record, it is transpired that both the victims were minor at the relevant point of time. The applicant is admittedly not named in the FIR nor in the statements of the victims recorded under Sections 161 & 164 CrPC. The name of the applicant has surfaced in the confessional statement of the co-accused Sultan against whom the allegations of committing sexual assault with both the victims have been levelled. In their statements, the victims have stated that apart from Sultan, there was one more person who was sitting at a little distance. Even if this is accepted as truth and that unknown person is deemed to be the applicant, there is no allegation of committing sexual assault by the applicant with the victims. The applicant is in jail in this case since 13.12.2022 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. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

12. Let the applicant- **Ameen** involved in the aforesaid case be released on bail on 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 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 :- 22.11.2023

Shravan