

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12099 of 2023

Applicant :- Imteyaz @ Istekhar

Opposite Party :- State Of U.P. Thru. Its Secy. Deptt. Of Home, Affairs Lko. And Others

Counsel for Applicant :- Akhilesh Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per the information given by learned AGA and as has also been recorded on 28.10.2023 that the opposite party no.2/ complainant has been sufficiently served and the report in this regard sent by the concerned Police Station was placed for perusal of this Court and has been taken on record and thus it appears that oppose party no.2/ complainant has been sufficiently served, however, she is not represented.

2. Heard Shri Akhilesh Pratap Singh, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/ applicant- **Imteyaz @ Istekhar** for grant of bail, in Case Crime No. 255/2023, under Sections 323, 366A, 376 of IPC and Section 34 of POCSO Act, Police Station PGI, District Lucknow, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The First Information Report of the instant case has been lodged by the mother of the victim on 11.04.2023 at Police Station P.G.I., Lucknow (East), naming one Dr. Gaurang Mishra and Imteyaz Ahmad (not the applicant as the name of the applicant is Istekhar) with the allegations that on 10.4.2023 at about 5.00 P.M. Dr. Gaurang Mishra abducted the victim and left her at Bareilly crossing at 8.00 P.M. and he also called other person who had taken the victim at *Shyam Surya Flat* and committed sexual assault with her and the victim was then left on 11.4.2023 at 7.20 P.M. at Bareilly Railway Crossing.

4. Highlighting the above fact, it is vehemently submitted that the story as cooked up by the prosecutrix is highly concocted, fabricated and could not be believed. It is further submitted that

it is admitted to the victim in her statements recorded under Section 161 and 164 Cr.P.C. as well as by the informant in her statement recorded under Section 161 Cr.P.C. that on a dispute with regard to the theft of mobile phone from the flat of Dr. Gaurang Mishra, where the victim's mother was employed as a house maid, Dr. Gaurang Mishra had come to the house of the victim on 10.4.2023 along with his wife and had taken the gas cylinder and mobile phone and thereafter the victim was not found at her home and victim was taken by doctor and the doctor had sent the victim with accused Imteyaz Ahmad who had taken the victim to *Shyam Surya Flat* where he raped her.

5. It is also submitted that the involvement of the applicant in this case has been made without there being any basis. It is vehemently submitted that the applicant's name is Istekhar and not Imteyaz and all the allegations by the informant as well as by the victim have been levelled against the accused 'Imteyaz' which is also the name of real brother of the applicant, however, the police had apprehended the applicant and despite being informed that he is not Imteyaz he was arrested and detained in prison, without establishing his identity.

6. It is vehemently submitted that despite being informed about the identity of the applicant the Investigating officer had not conducted any test identification parade nor the applicant was identified by the prosecutrix/ victim.

7. It is vehemently submitted that the medical evidence is not in support of the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. and no injury of any kind has been noticed on her person when she was medically examined.

8. It is also submitted that the age of the prosecutrix in the statement of the victim has been stated as 13 years while at the time of medical examination her age has been shown as 15 years but the tender age of the prosecutrix is not relevant so far as the plea of bail of the applicant is concerned as he was not at all concerned with the crime and has been falsely implicated.

9. Learned counsel for the applicant in order to project that he is Istekhar and not Imteyaz has drawn the attention of this Court towards the copy of the affidavit given by the wife of the applicant (Istekhar Ahmad), a certificate given by the Pradhan of Village Panchayat, Raj Sabeya Ram Nagar Champaran and a copy of his Aadhar Card as well as the Aadhar Card of Imteyaz Ahmad as well as the certificate given by the Village Pradhan with regard to the fact that the police had taken the applicant (Istekhar) on the pretext that he is being taken only for some inquiry, placed on record from page no. 54 till page no. 60 of

the paper book.

10. It is also submitted that the applicant is in jail in this case since 03.6.2023 and he is not having any criminal antecedent 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.

11. Learned A.G.A. on the other hand opposes the prayer of bail of the applicant on the ground that the applicant is accused of committing heinous offence.

12. Having heard learned counsel for the parties and having perused the record, it is important to recall that having regard to the submissions raised by learned counsel for the applicant with regard to the name of the applicant as 'Istekhar' and not 'Imteyaz'. The Investigating Officer of the case was directed to remain present before this Court on 18.10.2022 and on 18.10.2023 following order was passed by this court :-

"1. In pursuance of earlier order of this Court the Investigating Officer of this case is personally present.

2. Having deliberated issue of identification of the applicant for quite some time it appears that an opportunity may be provided to the applicant to bring on record all the documents in his possession to show that he is Istekhar and is not Imteyaz. It is also emerged during the course of deliberation that identity of the accused Imteyaz Ahmad has been fixed on the basis of an Adhar Card which was allegedly found at the scene of crime. The copy of the Adhar Card allegedly of accused Imteyaz Ahmad is placed at page no. 60 of the paper book, wherein photograph of Imteyaz Ahmad is quite clear. Thus, it is directed that Adhar Card of the accused Imteyaz Ahmad which was allegedly found from the crime scene which was taken into custody by the Investigating Officer shall be produced before this Court on the next date of listing in a sealed cover.

3. The applicant who is claiming himself to be Istekhar Ahmd and is stated to be lodged in District Jail, Lucknow, shall also be produced before this Court in person, having regard to his security, on the next date of listing. In this regard Commissioner of Police Lucknow in Coordination with Superintendent of Jail of District Jail, Lucknow shall arrange for escort of the accused Istekhar @ Imtyeyaz from District Jail, Lucknow to this Court and also for return journey of the applicant.

4. Investigating Officer present today, shall remain present personally on the next date of listing.

5. List accordingly on 28.10.2023 in the first ten cases of the cause list, by which date the State, if so wish, may file counter affidavit/ objections."

13. On 28.10.2023 the accused/ applicant was produced in the Court and Additional Inspector has also produced Aadhar Card of Imteyaz @ Istekhar which according to the Investigating

Officer was found on the scene of crime. A photo copy of that Aadhar Card was taken on record. The order which has been passed on 28.10.2023 is being reproduced as under:-

"In compliance of earlier order of this Court, Sri Amit Singh, Additional Inspector, Police Station PGI, District Lucknow has produced before this Court the Aadhar Card allegedly of Imteyaz @ Istekhar, which is claimed to have been found at the scene of the crime in a sealed plastic box. After opening the same, a photocopy of the same was obtained and the plastic box was sealed again by placing the adhar card therein.

The Additional Inspector, who has produced the plastic box before this Court, is directed to take it back and place it in the safe custody from where it was produced before this Court.

The applicant-Imteyaz @ Istekhar lodged in prison has been produced before this Court by Sri Yogesh Singh, Sub-Inspector, Police Station Reserve Police Line, Lucknow. He is also directed to take back the applicant and lodge him in prison having regard to his security.

Counter affidavit filed by the State is taken on record. Supplementary affidavit filed on behalf of the applicant is also taken on record.

At this juncture, learned A.G.A informs that opposite party no.2 has been served sufficiently and by mistake proof of service could not be enclosed with the counter affidavit/objection filed today. The report/intimation sent by the Police Station PGI in this regard has been placed before this Court for perusal with regard to service upon opposite party no.2, the same is also taken on record.

Heard Sri Akhilesh Pratap Singh, learned counsel for applicant as well as learned A.G.A and perused the record.

Arguments heard and concluded.

List this case on 06.11.2023 for pronouncement of order."

14. Learned counsel for the applicant has raised many submissions including the submissions that the name of the applicant is Istekhar and not Imteyaz while all the allegations have been levelled by the victim against Imteyaz, the Investigating officer of the case had arrested a wrong person. Reliance in this regard has been placed on the Aadhar Card of the applicant as well as of Imteyaz. The Investigating Officer who was present before this Court had categorically stated that identity of the applicant was established only on the basis of an Aadhar Card allegedly found from the scene of the crime. A copy of the same, as stated earlier was taken on record. The Investigating officer has also recorded the statement of the co-accused Arun Awasthi @ Gaurang Mishra who has stated a different story with regard to the theft of a mobile phone committed by the victim from his house and also that when the victim was scolded by the complainant, she had left her house

and it was he (co-accused Dr. Gaurang Mishra @ Arun Awasthi) who had gone in response to a call made by victim and had taken her to his home and also offered her food in presence of his daughter and the victim was taken by the complainant on 11.4.2023 at 2.50 P.M. The CCTV Camera recording of the same has also been provided to the Investigating Officer. Admittedly the Investigating Officer has not taken pains to get the identity of the applicant established and stated before this Court to have arrested the applicant only on the basis that he (applicant) has told his name as Imteyaz. Perusal of the Aadhar Card allegedly recovered from the scene of crime and the Aadhar Card of Istekhar Ahmad (applicant) prima facie shows that photographs fixed on these Aadhar Cards are of different persons. When the applicant who is detained in prison was summoned by this Court his face was not tallying with the photograph affixed on the Aadhar Card of Imteyaz Ahmad, allegedly found from the spot and the same was prima facie resembling with the photograph affixed on the Aadhar Card of Istekhar Ahmad, copy of which is placed at page no. 59 of the paper book. This Court is not having any hesitation in opining that the Investigating Officer has not conducted investigation diligently and has not established the identity of applicant. Admittedly the prosecutrix has taken the name of Imteyaz as the perpetrator of the crime and the instant applicant is claiming himself to be Istekhar which is also the name of his brother. There are other witnesses also whose statements have been recorded by the Investigating Officer, namely, Ahsan Ahmad and Ashish, who could very easily identify the accused Imteyaz Ahmad, but the Investigating officer did not take pains to get the applicant identified by these witnesses.

15. Thus, having regard to the reasons mentioned herein-above, in the considered opinion of this Court the case of bail in favour of the applicant is made out. The bail application of the applicant is, thus, **allowed**.

16. Let the accused/applicant- **Imteyaz @ Istekhar**, involved in above-mentioned case, be released on bail on his furnishing a personal bond with two **heavy 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.

(iv). The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(v). In case, the applicant misuses the liberty of bail and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code; and

(vi) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

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

19. The trial court is directed to expedite the trial and record the evidence/ statement of the prosecutrix in presence of accused/ applicant, having regard to the procedure and precaution required for camera trial, immediately for the purpose of establishing identity of the perpetrator of the crime and make all out efforts to conclude the same within six months, if there is no legal impediment.

20. 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.

21. A copy of this bail order be immediately sent to trial court through Sessions Judge concerned, for compliance.

Order Date :- 6.11.2023/ Muk