

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12377 of 2023

Applicant :- Siyad Ali

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home, Lko. And 4 Others

Counsel for Applicant :- Ashok Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. On 18.10.2023, it was informed by the learned A.G.A. that the victim/opposite party no. 3 has been served at their end. Today, copy of the report submitted by the S.H.O. of the concerned police station, which is also bearing the signature of the victim/opposite party no. 3, has been placed before this Court for perusal. The same is taken on record. It appears that the victim/opposite party no. 3 has been personally/sufficiently served. However, she is not represented.

2. Heard Mr. Ashok Kumar Srivastava, learned counsel for the accused-applicant, as well as learned A.G.A. for the State on this 2nd application for bail moved on behalf of the applicant and, perused the record.

3. This bail application has been moved by the accused/applicant- for grant of bail in Case Crime No.0184 of 2021, under Sections 323, 504, 506, 509 354(Ka) and 376-D IPC read with Section 67 of Information Technology Act, Section 5-G/6 of Protection of Children from Sexual Offences Act, 2012 and Sections 3(2)(V), 3(1)(Da), and 3(1)(Dha) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 lodged at Police Station Kandhai, District Pratapgarh, during trial.

4. Learned counsel for the accused-applicant submits that the first bail application of the applicant was rejected by the Coordinate Bench vide order dated 09.05.2022 passed in Criminal Misc. Bail Application No.905 of 2022 and, after rejection of first bail application of the applicant, the statement of the prosecutrix was recorded before the trial Court wherein she has been declared hostile and has denied to have given any statement to the investigating officer under Section 161 CrPC and alleged that the statement under Section 164 CrPC was given by her while she was under the pressure of police

personnel. It is further submitted that it has been specifically stated by the prosecutrix before the trial Court that the applicant has not committed any sexual assault or rape with her. It is also submitted that since the star witness of this crime, namely, the prosecutrix has been declared hostile before the trial Court and has not supported the version of the prosecution, it would not be possible for the prosecution to secure conviction of the applicant and, thus, there is change in circumstances since the rejection of first bail application of the applicant. It is further submitted that identically placed co-accused, namely, Israt and Sahil have been enlarged on bail by the coordinate Bench of this Court vide orders passed in Criminal Misc. Bail Application Nos.1242 of 2023 and 11066 of 2023 respectively. It is further submitted that the applicant is languishing in jail in this case since 29.05.2021 and he is having criminal history of one case in which he has been enlarged on bail by the trial Court and the bail order, pertaining to this case, has been placed as Annexure-8 to the bail application 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.

5. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the first bail application of the applicant has been rejected on merits and there is no changed circumstance since the rejection of first bail application of the applicant.

6. Having heard learned counsel for the parties and having perused the record, it is reflected that the first bail application of the applicant was rejected by the Coordinate Bench of this Court on 09.05.2022. The statement of the prosecutrix has been recorded before the trial Court on 07.10.2023 wherein she has disowned her statement recorded under Section 161 CrPC and with regard to her statement recorded under Section 164 CrPC, she has stated that the same had been given while she was under the influence of police personnel. She has given a clean-chit to the applicant and other accused persons by saying that the applicant and other accused persons have not committed any kind of mischief with her. In this background, it is vehemently submitted that since the star witness of this crime has been declared hostile, conviction of the applicant would not be possible. Identically placed co-accused Israt and Sahil have already been enlarged on bail by the Coordinate Bench of this Court and nothing has been brought in the knowledge of this Court which may suggest that the bail orders whereby the co-accused have been granted bail have been challenged at any higher forum or has been cancelled by the same Court. Criminal history of the applicant of one case has been adequately explained. The applicant is languishing in jail in this case since

29.05.2021 and the presence of the applicant may be secured before the trial court by placing adequate conditions.

7. 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. The bail application is, thus, **allowed**.

8. Let the accused/applicant- **Siyad Ali**, 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 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.

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

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

11. 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.

[Mohd. Faiz Alam Khan,J.]

Order Date :- 7.11.2023

MVS/-