

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14508 of 2022

Applicant :- Ramesh

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

Counsel for Applicant :- Brij Bhushan Singh, Abhinav Srivastava, Rahul Srivastava, Vinai Kumar Bhatt

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Learned A.G.A. informs that opposite party no.2 (complainant) has been served at their end and in this regard a communication received by him from S.H.O. of Police Station Maharuwa, District Ambedkar Nagar is placed for perusal of this Court, which shows that a report has been submitted by the Police Station Maharuwa, District Ambedkar Nagar that the opposite party no.2 has been personally served. The same is taken on record. Thus, the opposite party no.2 appears to have been sufficiently/personally served.
3. Heard Shri Abhinav Srivastava, Advocate holding brief of Shri Rahul Srivastava, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This second bail application has been moved by the accused/applicant- **Ramesh** for grant of bail, in F.I.R./Case Crime No. 144 of 2021, under Sections 363, 366, 376 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012, Police Station Maharuwa, District Ambedkar Nagar, during trial, as his first bail application has been rejected by a co-ordinate Bench of this Court, vide order dated 13.09.2022 passed in Criminal Misc. Bail Application No. 7157 of 2022.
5. 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 this case has been lodged by the father of the victim on 23.11.2021 against the applicant alleging therein that the applicant has enticed away his daughter, who is a student of Class XII and, thereafter, the whereabouts of his

daughter could not be known and also that the applicant is already married and father of a child. On being recovered, the statement of the victim was recorded under Section 161 and 164 Cr.P.C., wherein she stated that she was enticed away/abducted by the applicant and they stayed in night at Shiv Baba Temple from where they had gone to Ludhiana and at Ludhiana the applicant has also sexually assaulted her. Some additional facts have also stated in the statement of the prosecutrix recorded under Section 164 Cr.P.C. pertaining to the fact that they have also stayed at the house of the sister of the applicant and thereafter they had gone to Dostpur where they resided in a rented accommodation for 10-15 days. The medical report of the prosecutrix has not shown any injury or abnormality.

6. Highlighting the above facts, it is vehemently submitted that if the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. are read conjointly, it would emerge that she was a 'consenting party', as she has accompanied the applicant and in her journey with the applicant to various places she has not raised any alarm and no abnormality of any kind has been found in her medical examination.

7. It is also submitted that the statement of the informant as well as of the prosecutrix has been recorded before the trial Court as P.W.-1 and P.W.-2, while the informant wherein the prosecutrix though, in her examination-in-chief has supported the version of the prosecution but during cross-examination she stated that she started hating the applicant when she came to know that he is already married and from thereafter she started giving statements against the applicant and it is highlighted that an inference may be drawn that the statement of the prosecutrix given against the applicant is only on account of her knowledge which has been obtained later on pertaining to his marital status.

8. It is further submitted that the prosecutrix in her cross-examination has also not identified the applicant by saying that she doesn't know the applicant. It is vehemently submitted that quality of the evidence deposited before the trial Court by the informant and prosecutrix/victim coupled with the period of detention of the applicant i.e. from 30.11.2021 and also having regard to the fact that applicant is not having any criminal history are substantial change in the circumstances since the rejection of his first bail application. There is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

9. Learned A.G.A. on the other hand submits that the first bail

application of the applicant has been rejected by a reasoned order and there is no substantial change in circumstances since the rejection of the first bail application of the applicant.

10. Perusal of the record in the background of the submissions made by learned counsel for the parties would reflect that the age of the prosecutrix as per her educational credentials is about 17 years at the time of the alleged incident, thus, she was minor. Various submissions have been raised on behalf of the applicant by citing the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. as well as before the trial Court as P.W.-2 in order to canvass that the prosecutrix, who was having sufficient intellect had travelled with the applicant in many cities and, thus, she was a 'consenting party', as no alarm was ever raised by her and she was brought back to her house by the applicant himself. The medical report of the prosecutrix is also clean. Applicant is languishing in jail in this case since 30.11.2021 without any criminal antecedents. Two prosecution witnesses have been testified so far before the trial Court and the conclusion of trial before the trial Court would take sometime. Thus, for the reasons, which have mentioned herein-before, I am of the considered view that there are substantial change in the circumstances since the rejection of the first bail application of the applicant, the facility of bail may now be safely extended to the applicant.

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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicant- **Ramesh** 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.

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 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.

Order Date :- 18.10.2023

Praveen