

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12700 of 2023

Applicant :- Anubhav Sharma

Opposite Party :- State Of U.P. Thru. Home Secy. Sectt. Lucknow

Counsel for Applicant :- Parmanand Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Parmanand Gupta, learned counsel for the applicant, learned AGA for the State and perused the record.

2. This is the second bail application. The First bail application was rejected on 29.08.2023 by this Court. A detail order has been passed which is quoted below :

" 1. Heard Sri Parmanand Gupta learned counsel for the applicant, Sri Vaibhav Tiwari, learned counsel for the complainant, Sri Rajesh Kumar Singh learned AGA-I for State assisted by Ms. Rani Singh Brief Holder for State.

2. This first bail application has been filed by the applicant for grant of bail in case crime No.403 of 2022 under Section 354 (Ga), 406, 420, 376, 328, 506 IPC and Action 67, 67 (A), 66 (C), 66 (D), 66 (E) of I.T. Act, PS Gomti Nagar, district Lucknow.

3. It has been submitted by the learned counsel for the applicant that the mother of the prosecutrix lodged FIR on 3.6.2022. He has submitted that a bare perusal of FIR indicates that it is a case of consent and the incident took place long back but the FIR has been lodged much belated. It is submitted that the prosecutrix is married woman of 26 years of age and the FIR further indicates that it is a case of consensual relation between the applicant and the prosecutrix. It has been further submitted that no date has been mentioned by the prosecutrix in her statement under Section 164 and also she has not disclosed in which Hotel sexual offence was committed against her. It is submitted that no independent witness has been examined in the present case and the Hotel Manager has not been examined and there is no evidence found against the applicant that he has committed rape. Learned counsel for the applicant has further submitted that though recovery of laptop of the applicant is made but there is no porn video found in the laptop and the FSL report has come to the effect that the laptop is blank. He has further submitted that since laptop of the applicant is blank, therefore, the prosecution case is highly doubtful. Learned counsel for the applicant has further argued that statement of the Investigating Officer was recorded before the Trial Court and he has deposed before the Court that he has not seen the porn video.

4. Learned counsel for the applicant has submitted that the prosecutrix, her mother and her maternal uncle have stated before the Court that no evidence was supplied by them. However, they have stated that they had seen the video on the porn site.

5. On the other hand, Sri Vaibhav Tiwari learned counsel for the complainant has argued that the Trial Court is proceeding in the case and the statement of facts have been recorded. Even proceeding under Section 313 CrPC has been recorded and the case is fixed for defence examination. He has invited attention of this Court towards the FIR lodged by the mother of the prosecutrix in which she has mentioned that the brother of the complainant had informed her that video of prosecutrix is viral on the porn site. She also checked and saw said video. The mother of the prosecutrix has further stated that her daughter told her

that she was studying along with the applicant and the applicant made video. Thereafter, he threatened to viral the same and established physical relation with her. It has been further mentioned in the FIR by the mother that the prosecutrix was intimidated and threatened by the applicant at Lucknow and he also demanded Rs.5,00,000/- (five lakhs) from her daughter. Threatening was also given to the extent that he will viral the video and the same will be shown to porn site. The name of the site of the video is also mentioned in the FIR as FRY99.com. Learned counsel for the complainant has further submitted that under Section 164 CrPC almost the same statement has been stated by the prosecutrix. He has submitted that the statement of the prosecutrix has been recorded before the Trial Court and she has supported the prosecution version.

6. Sri Rajesh Kumar Singh, learned AGA-I, assisted by Ms. Rani Singh Brief Holder for State has submitted that the FSL report of the laptop has been obtained. However, the FSL report indicates that the laptop is blank and it has been submitted that the laptop was sent to the Laboratory and recovery of laptop was made on 14.9.2022 and thereafter, FSL report has come. It has been submitted that FIR was lodged on 3.6.2022 and recovery was made on 14.9.2022 and there was sufficient time to delete the video and the laptop itself indicates that the applicant deleted the entire material in the laptop. She has further invited attention of this Court towards para-18 and 21 of the counter affidavit dated 4.11.2022 of the State and has stated that contents of para-18 and 21 of the counter affidavit contain sufficient material that porn site FRY99.com was used and sufficient material has been collected and the video of the prosecutrix was uploaded. She has further submitted that statement of prosecutrix under Section 164 CrPC indicate that she has levelled allegation of physical relation having been established by the applicant out of threats. The said act is coming within the purview of rape. It has been submitted that it is a heinous crime and the applicant did wrong thing by uploading the video and thus, chastity and honour of a girl has been tarnished.

7. Considering over all facts and circumstances of the case and the fact that the statement of prosecutrix PW-1 under Section 164 CrPC has been recorded which indicates that she has levelled allegation of rape against the applicant, the argument that video was uploaded on porn site and sufficient material has been collected, the argument that the trial is at the final stage and all the witnesses have supported the prosecution case, it is not a fit case for bail. The bail application is liable to be rejected.

8. Accordingly, the bail application is rejected. "

3. The present bail application has been filed by the applicant **Anubhav Sharma**, with a prayer to enlarge him on bail in Case Crime No.403 of 2022, under Sections 420, 328, 354Ga, 506, 406, 376 IPC., and Section 66C, D, E, & 67A IT Act, Police Station Gomti Nagar, District Lucknow.

4. Learned counsel for the applicant could not satisfy the court as to what is the changed circumstance in the present scenario. The bail application was rejected on 29.08.2023 and he has filed this second bail application which is premature. It is submitted that the trial is still pending since long time.

5. Learned AGA opposed the prayer for bail and submitted that there is no changed circumstance and since the bail application is premature, the bail application is liable to be rejected.

6. After hearing learned counsel for the parties and looking over all facts and circumstances of the case, considering the argument of learned AGA that the bail application is premature and there is no changed circumstance, I am of the opinion that the applicant is not entitled to be released on bail.

7. Thus, having regard to the evidence available on record against the applicant and his complicity in the crime, I do not find any good ground to release the applicant on bail. Thus, the bail application moved on behalf of applicant Anubhav Sharma is hereby, rejected.

8. Observations made hereinabove 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.

9. However, the trial Court is directed to conclude the trial within a period of four months from the date of production of certified copy of this order.

Order Date :- 30.10.2023

Pks