

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 12831 of 2023

Applicant :- Sakir Ali Khan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko.

Counsel for Applicant :- Dinesh Kr. Chaudhary, Ripu Daman Shahi

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 he has procured complete instructions in the matter including upto date/complete case diary and charge sheet has also been submitted.
3. Heard Shri Dinesh Kr. Chaudhary, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Sakir Ali Khan** for grant of bail, in Case Crime No. 370 of 2019, under Sections 328, 376-D and 506 I.P.C., Police Station Kotwali Nagar, District Balrampur, during trial.
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 was lodged by the prosecutrix herself, wherein co-accused Mohammad Masood Raza was named and the name of the applicant was not mentioned and all allegations were levelled against the co-accused Mohammad Masood Raza even in the statement of the prosecutrix recorded under Section 161 Cr.P.C., the allegations were with regard to the co-accused Mohammad Masood Raza and two unknown persons and the name of the applicant was not mentioned. However, after many days of the recording of the statement of the prosecutrix under Section 161 Cr.P.C., her statement under Section 164 Cr.P.C. was recorded and in this statement she has taken the name of the applicant without explaining how the name of the applicant became known to her when the same was not known to her at the time of lodging of

the F.I.R. or even at the time of recording of the statement of the prosecutrix under Section 161 Cr.P.C.

6. Elaborating further, it is submitted that the whole story, as has been narrated by the prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C., are highly improbable and could not be believed. The main accused of the alleged crime, namely, Mohammad Masood Raza has been granted bail by a co-ordinate Bench of this Court, vide order dated 27.06.2023 passed in Criminal Misc. Bail Application No. 1929 of 2023.

7. It is further submitted that applicant is languishing in jail in this case since 10.09.2023 and criminal history of one case, which is with regard to the non-appearance of the applicant in the instant case, has been explained through supplementary affidavit filed today and if the facility of bail is extended to the applicant in this case, he would immediately appear before the concerned Court for the purpose of securing bail in the case which has been shown as the criminal history of the applicant and apart from that case, the applicant is not involved in any other case. Charge sheet in this case has already been filed 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.

8. It is also submitted that the age of the prosecutrix, as stated by her in her statements recorded under Section 161 and 164 Cr.P.C. is 40 years and nothing abnormal or any injury has been found on her person when she was under medical examination and her pathological reports are also clean.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and, therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it appears to be an admitted situation that in the F.I.R. as well as in the statement of the prosecutrix recorded under Section 161 Cr.P.C., applicant was not named and the allegations were against co-accused Mohammad Masood Raza and two unknown persons. Suddenly in her statement recorded under Section 164 Cr.P.C. she had taken the name of the applicant. The defence of the applicant/accused is to the tune that when the name of the applicant was not known to the prosecutrix at the time of lodging of the F.I.R. and at the time of recording her statement under Section 161 Cr.P.C., there is a vacuum how the name of the applicant was known to her at the stage of recording of statement under Section 164 Cr.P.C. The

co-ordinate Bench has granted bail to the co-accused Mohammad Masood Raza, who was named in the F.I.R. as well as in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. and in the opinion of learned counsel for the applicant he (co-accused Mohammad Masood Raza) is the main accused of the alleged crime. The order passed by a co-ordinate Bench is detailed order where every 'pros and cons' of the case, which has been placed before the co-ordinate Bench has been discussed and after discussing at length, the co-ordinate Bench had arrived at a decision that the facility of bail may be extended to the co-accused Mohammad Masood Raza. The case of the instant applicant is on better footing than the co-accused Mohammad Masood Raza. Applicant is languishing in jail in this case since 10.09.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing 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 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- **Sakir Ali Khan** 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) Within one month of his release from prison the applicant shall appear before the concerned Court for the purpose of securing bail in the case, shown as the criminal history of the applicant.

(ii) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(iii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iv) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v) 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;

(vi) 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

(vii) 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.

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 :- 7.11.2023

Praveen