

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 14099 of 2023

Applicant :- Guddu Alias Ishtekhar Ahmad

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

Counsel for Applicant :- Hemant Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Counter affidavit filed on behalf of the State is taken on record. The State along with its counter affidavit has also enclosed a copy of the information sent by the S.H.O. of Police Station Kotwali City, District Pratapgarh with regard to the service of notice on opposite party no.2. Thus, the opposite party no.2/informant has been sufficiently served and she is not represented.

2. Heard Shri Hemant Tripathi, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

3. This third bail application has been moved by the accused/applicant- **Guddu Alias Ishtekhar Ahmad** for grant of bail, in F.I.R./Case Crime No. 1027 of 2020, under Sections 363, 366, 354-B, 376, 506 I.P.C. and Section 3/4 of POCSO Act, Police Station Kotwali City, District Pratapgarh, during trial, as his earlier two bail applications have been rejected by a co-ordinate Bench of this Court. However, the Hon'ble Judge who has rejected the earlier two bail applications of the applicant, has been transferred to some other High Court.

4. Learned counsel for the accused-applicant while pressing the bail application submits that this is the third bail application of the applicant, as his earlier two bail applications have been rejected by a co-ordinate Bench of this Court. Elaborating further, it submitted that it is a case of false implication. The F.I.R. of this case was lodged by the mother of the prosecutrix/victim on 05.11.2020 at Police Station Kotwali City, District Pratapgarh alleging that on 05.10.2020 at about 11:00 am. the applicant and other co-accused has enticed away her daughter, aged about 13 years and also filmed an obscene video of her and committed rape. The information of this illegal act was given by the victim to her. It is also stated that applicant is

also intimidating her not to lodge any F.I.R. The prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. has supported the allegations of rape and her age as per ossification test has been assessed as 10-12 years and on the basis of educational credentials as 13 years and 08 months at the date and time of the incident.

5. Highlighting the above facts, it is vehemently submitted that though, the prosecutrix as well as the informant has supported the allegations of rape in their statements recorded under Section 161 and 164 Cr.P.C., however, during trial the statement of the informant and prosecutrix/victim have been recorded as P.W.-1 and P.W.-2, while the informant was intact in her in-chief-examination, but have chosen to become hostile while under cross-examination but the prosecutrix in her in-chief-examination also has not supported the version of the prosecution and have completely denied to have been subjected to rape.

6. It is further submitted that since the prosecutrix and informant both have become hostile before the trial Court, the chances of conviction of the applicant are remote, moreso when the allegations of rape are not being corroborated by any medical evidence. Applicant is languishing in jail in this case since 26.07.2021 and he is not having any criminal history 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.

7. Learned A.G.A. on the other hand submits that the applicant has committed an heinous offence and, moreover, his earlier two bail applications have been rejected by a co-ordinate Bench of this Court on merits, therefore, he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is evident that this is the third bail application of the applicant, as his earlier two bail applications have not been found favour by a co-ordinate Bench of this Court. The law with regard to the successive bail applications is now well-settled and the same may be summarized to the tune that the subsequent bail application by an accused person(s) could only be entertained while there are substantial change in circumstances and the accused must not be a privy to the same and the changes must not be cosmetic but must have some substance. Martialling the facts of the instant case in the light of the law discussed above would reveal that the first bail application of the applicant was rejected on 22.09.2022 while his second bail application has been rejected on 28.03.2023.

The second bail was rejected on the ground that there is no substantial change or to say any change in the circumstances since the rejection of the first bail application of the applicant.

9. It appears to be an admitted situation that the statement of the prosecution witness no.1 and 2 (Informant and Victim) have been recorded before the trial Court on 02.09.2023 and 06.11.2023. While the informant has chosen to become hostile in her cross-examination, the victim has chosen to become hostile since beginning and they both have disowned their statements recorded under Section 161 and 164 Cr.P.C. and it is in this background, it is submitted by learned counsel for the applicant that the instant case has become a case without any evidence and the chances of the applicant being convicted by the trial Court are remote since the prosecutrix as well as the informant have chosen to become hostile and have not supported the allegation of rape before the trial Court. Admittedly the circumstances have changed since the rejection of the earlier two bail applications of the applicant and, thus, having regard to all the facts and circumstances of the case, without commenting anything on the merits and demerits of the case as the same may affect the outcome of the trial, suffice is to say that a case of bail has now emerged in favour of the applicant, moreso, when he is not having any criminal antecedents and is detained in prison since 26.07.2021.

10. 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. This third bail application is thus **allowed**.

11. Let the accused/applicant- **Guddu Alias Ishtekhar Ahmad** 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 remain present before the trial court on each and every date whereon his presence would be required by the trial court and shall not seek any adjournment especially on the dates when the prosecution witnesses would be in attendance .**

(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.

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

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

14. 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 :- 19.12.2023

Praveen