

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8003 of 2024

Applicant :- Ikramuddin

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

Counsel for Applicant :- Raghunath Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Shri Raghunath Prasad, learned counsel for the applicant as well as Shri Rajiv Kumar Verma, learned AGA-I for the State and perused the material placed on record.

Learned A.G.A.-I for the State submits that notice has already been served upon opposite party no.2 as per his information from the concerned police station but today when the case is taken up in the revised list, no one has appeared on behalf of opposite party no.2 to press this bail application nor any counter affidavit has been filed on her behalf.

This is second bail application moved on behalf of the applicant- Ikramuddin, who seeks bail in Case Crime No.165 of 2021, under Sections 363,342,376 DA IPC and section 5/6 Protection of Children from Sexual Offences Act, Police Station Itaunja, District Lucknow, during the pendency of trial.

Learned counsel for the applicant submits that the applicant is innocent and has falsely been implicated in the present case due to village rivalry. The applicant's name is Ikramuddin. His name does not find place in the first information report or even in the medical report.

Learned counsel for the applicant submits that as per the prosecution case the daughter of the informant who was aged about 14 years had gone to ease herself in the morning at 6.30 A.M. and returned her house and again she went for ease herself in between 10.00 A.M. to 10.30 A.M., but when she did not return her house, she was searched by the informant and his other family members, resulting she could not be traced. Thereafter, the first information report was lodged on 13.06.2021 at 14.27 hours against unknown person under section 363 IPC.

Learned counsel for the applicant further submits that the statement of the complainant (mother of the victim) was recorded under section 161 Cr.P.C, in which she has repeated the same version of the first information report.

Learned counsel for the applicant further submits that as per the prosecution case set up, the victim was recovered on the information given by Mukhbir Khas on 14.06.2021 at 9.30 P.M. by the police and thereafter her custody was given to her mother. On the same day, her statement was recorded by the police, in which she has only stated that she went to some place but she has not named to any of the accused including the present applicant that they have committed rape with her or they have taken her away with them. Thereafter the statement of the victim was also recorded under section 161 Cr.P.C by the police, in which she has stated that on 14.06.2021 due to anger with her mother she had gone without telling to anyone and out of village one boy coming by motorcycle met her. She asked him to leave her to BKT crossing. She went to Madiyawn on a tempo where five boys met her and asked her that from where she came and where she wants to go then she told the story that being angry with her mother she left her house and now she wants some job. Then those five boys who had met her assured that they will provide job to her and they took her away to a room by enticing, the said room was like a khandhar where one boy was already present. They gave samosa to her which she ate. In their conversation all the boys who were present inside the room, were taking their names as Ikramuddin, Shakeel, Uttam Sharma, Nafees, Phunnu and Nitesh Yadav. She further stated that Nitesh Yadav was standing at the gate of the room. All the five boys who were inside the room committed rape one by one with the victim till morning 6.00 O'clock. In the morning they left her near Hari Om Nagar School from where she was taken by the police to police station.

Learned counsel for the applicant further submits that the applicant was neither present on the alleged place of occurrence nor his name finds place in the FIR. Even though if it is assumed to be true that the present applicant was present on the alleged place of occurrence, the entire statements of the victim recorded under sections 161 and 164 Cr.P.C regarding allegation of rape got demolished after perusal of the medical report of the victim as the doctor in the medical report of the victim has opined that there is no external or internal injury seen on the body of victim nor there is any dead or live spermatozoa found in the vaginal smear slide and there are no signs of forceful sexual violence seen which can not be ruled out and final opinion can be given after FSL report. Regarding determination of the age of the victim the matter was referred to

the Chief Medical Officer but no report is still available on record regarding the age of the victim and as per her statement recorded u/s 161 Cr.P.C, she admitted her age as 15 years.

Highlighting the aforesaid facts, learned counsel for the applicant submits that as the applicant was neither named in the FIR nor the identification parade was done by the police nor the victim recognised the applicant, therefore the police with malicious intention has falsely implicated the applicant in the present case on the confusion, whereas the victim had taken the name of one Nitesh Yadav while the name of present applicant is Ikramuddin. His name is not Nitesh Yadav.

Learned counsel for the applicant further submits that co-accused, whose names were taken in the statement of the prosecutrix recorded under Section 164 Cr.P.C. i.e. Shakeel and Uttam Sharma alongwith the present applicant as well as the co-accused whose names were taken in the statement recorded under Section 161 Cr.P.C., who were standing in the room and watching has also no force as the co-ordinate Benches of this Court have already granted bail to the co-accused. The co-accused Ritesh Yadav @ Bhola has been granted bail by this Court vide order dated 13.07.2022 passed in Criminal Misc. Bail Application No.11208 of 2021. The co-accused Shakeel @ Chhotu has been granted bail by co-ordinate Bench of this Court vide order dated 20.09.2022 passed in Criminal Misc. Bail Application No.10645 of 2021. The co-accused Noor Mohammad @ Punnu has been granted bail by co-ordinate Bench of this Court vide order dated 11.10.2022 passed in Criminal Misc. Bail Application No.13226 of 2021. The co-accused Uttam Sharma has been granted bail by co-ordinate Bench of this Court vide order dated 15.02.2023 passed in Criminal Misc. Bail Application No.12622 of 2022. Thus, the learned counsel for the applicant submits that the present applicant may also be enlarged on bail by this Court sympathetically.

Several other submissions in order to demonstrate the falsity of the allegations made against the applicant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the applicant that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. The applicant undertakes that in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial. It has also been pointed out that the accused is not having any

criminal history and he is in jail since 20.09.2021 and that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned AGA while opposing the prayer for bail has submitted that the name of the applicant was taken by the victim in her statement recorded under sections 161 Cr.P.C. as Nitesh Yadav and present applicant who are the same person, therefore the bail application of the applicant may be rejected.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also the absence of any convincing material to indicate the possibility of tampering with the evidence, considering the fact that there is contradiction in the statements of the victim recorded under sections 161 and 164 Cr.P.C and also the version of FIR and the applicant is also not named in the FIR. The medical report does not support the prosecution case and considering the fact that the co-accused persons have already been granted bail by this Court as well as by co-ordinate Benches of this Court and further considering the larger mandate of Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh Vs. State of U.P. and another**, reported in **(2018) 3 SCC 22**, this Court is of the view that the applicant may be enlarged on bail.

The prayer for bail is granted. The application is allowed.

Let the applicant **Ikramuddin** involved in Case Crime No.165 of 2021, under Sections 363,342,376 DA IPC and section 5/6 Protection of Children from Sexual Offences Act, Police Station Itaunja, District Lucknow, be released on bail on his executing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned on the following conditions :-

(1) The applicant will not make any attempt to tamper with the prosecution evidence in any manner whatsoever.

(2) The applicant will personally appear on each and every date fixed in the court below and his personal presence shall not be exempted unless the court itself deems it fit to do so in the interest of justice.

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

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

(5) In case the applicant misuses the liberty of bail during trial 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.

(6) The applicant shall remain present in person, before the trial court on the date 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 absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(7) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

(8) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court, Allahabad and shall make a declaration of such verification in writing.

It may be observed that in the event of any breach of the aforesaid conditions, the court below shall be at liberty to proceed for the cancellation of the applicant's bail.

It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the bail application and must not be construed to have any reflection on the ultimate merits of the case.

Order Date :- 24.7.2024

Saurabh