

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10202 of 2024

Applicant :- Rahul @ Pankaj

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

Counsel for Applicant :- Ajmal Khan, Prem Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.
2. The present application under Section 482 Cr.P.C. read with Section 528 Bharatiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") has been filed for the following main relief:-

*"For the facts, reasons and circumstances stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to direct the opposite party no.-2 and 3 not to arrest the petitioner during further investigation in pursuance of the order dated 05/07/2024 passed by the Learned Special Judge, SC/ST Act, Ambedkarnagar, as the petitioner has been granted bail by this Hon'ble Court in the instant case, and seek permission for arrest from this Hon'ble Court if any cogent evidence is found against the petitioner during further investigation by the investigating officer, in the light of law laid down by the Hon'ble Supreme Court in the case of **Pradeep Ram Vs. State of Jharkhand and Another, (2019) 17 SCC 326**, in the interest of justice."*

3. For the purposes of seeking relief quoted above, in nutshell, it is stated by learned counsel for the applicant that in Case Crime No.0408 of 2023, under Sections 147, 302, 201, 364, 120-B I.P.C., the applicant was enlarged on bail vide order dated 11.06.2024 passed in Crl. Misc. Bail Application No.5791 of 2024 (Rahul alias Pankaj Vs. State of U.P.) and accordingly in view of judgment passed in the case of **Pradeep Ram Vs. State of Jharkhand and Another, (2019) 17 SCC 326**, the appellant can only be arrested in added sections after seeking permission of the Court.

4. Order dated 11.06.2024, referred, reads as under, as the same is relevant to decide the present application.

"Counter affidavit is taken on record.

Heard counsel for the applicant, learned A.G.A. for the State and perused the record.

The present application has been filed on behalf of the applicant seeking bail in F.I.R/ Case Crime No. 408 of 2023, under Sections- 147, 302, 201, 364, 120B I.P.C., Police Station- Rajesultanpur, District- Ambedkar Nagar.

While pressing the present application for bail, learned counsel for the applicant submits that a perusal of the prosecution story from its very inception clearly indicates that no offence has been committed by the applicant, who is in jail since 02.02.2024, having no criminal history.

He further stated that co-accused namely Archana Singh @ Pinki Singh has already been enlarged on bail by this Court vide order dated 21.05.2024 passed in Criminal Appeal No. 1167 of 2024. Copy of bail order of co-accused placed before this Court is taken on record. In these circumstances, the applicant is also entitled to be released on bail on the ground of parity.

Relevant portion of the order dated 21.05.2024 passed in Criminal Appeal No. 1167 of 2024 on reproduction reads as under:-

"While pressing the present appeal, counsel for the appellant submits that a perusal of the prosecution story from its very inception clearly indicates that no offence has been committed by the appellant who is a lady about 25 years old and who is in jail since 29.01.2024 having no criminal history.

In continuation, it is stated that a conjoint reading of the statement of the informant and the statement of co-accused namely Durgesh, which is annexed as Annexure No.1 to the counter affidavit filed by the complainant, makes the points crystal clear that the deceased and co-accused Durgesh were having affair and on account of some misunderstanding, Durgesh committed crime and co-accused Durgesh Pal was engaged as driver by the appellant and after committing the crime, co-accused Durgesh took advice from the appellant and in response, the appellant advised him to hide the body of deceased.

It is further stated that in view of the aforesaid, in fact, no evidence is available against the appellant as this statement of the co-accused is not admissible evidence. In this regard, reference has been made to Section 24 to 27 of the Evidence Act , 1972.

It is also stated that initially the F.I.R. was lodged against unknown persons and during investigation, the name of the co-accused surfaced and based upon the statement of the co-accused, the appellant has been implicated.

It is further stated that in the facts of the case aforesaid, the appeal is

liable to be allowed, the impugned order is liable to be set aside and the appellant is entitled to be released on bail.

Learned A.G.A. as also counsel for the complainant vehemently opposed the aforesaid but could not dispute the contention made by counsel for the appellant.

It is further stated that in the facts of the case aforesaid, the appeal is liable to be allowed, the impugned order is liable to be set aside and the appellant is entitled to be released on bail.

Having considered the submissions advanced by counsels for the parties, including the contents of F.I.R., statements of co-accused, as also the provisions as envisaged under Section 24 to 27 of the Indian Evidence Act, this Court is of the view that the present appeal is liable to be allowed and impugned order is liable to be set aside and the appellant is entitled to be enlarged on bail.

In view of the aforesaid, order dated 16.03.2024, passed by Special Judge, SC/ST Act, Ambedkar Nagar, in Bail Application No. 288/2024, arising out of F.I.R/ Case Crime No. 408 of 2023, under Sections 147, 302, 201, 364 I.P.C. and Section 3(2)(V) of SC/ST Act, Police Station- Rajesultanpur, District- Ambedkar Nagar, is hereby set aside and the appeal is allowed.

Let appellant Archana Singh @ Pinki Singh, be released on bail in the aforesaid case crime number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following additional conditions:-"

Learned A.G.A. as also counsel for the complainant vehemently opposed the aforesaid but could not dispute the contentions made by counsel for the applicant as also that co-accused has been enlarged on bail.

Having considered the submissions advanced by counsels for the parties, including the contents of F.I.R., statements of co-accused, as also the provisions as envisaged under Section 24 to 27 of the Indian Evidence Act and taking note of the fact that co-accused has been released on bail by this Court, this Court is of the view that the present application is liable to be allowed. It is accordingly allowed.

Let the applicant-Rahul Alias Pankaj be released on bail in the aforesaid case crime number on his furnishing personal bond and two reliable sureties each of the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall cooperate with the prosecution during trial.

(ii) The applicant shall not tamper with the evidence during trial.

(iii) The applicant shall not pressurize/intimidate the prosecution witness(s).

(iv) The applicant shall not commit an offence.

(v) The applicant shall not directly or indirectly make any inducement,

threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(vi) The applicant shall remain present before the trial court on each date fixed, either personally or through counsel.

(vii) The applicant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court.

(viii) The applicant shall remain present, in person, before the trial court on the dates fixed for recording of statement under Section 313 Cr.P.C.

In case of default of above conditions, it shall be open for the trial court to treat it as abuse of liberty of bail and pass order(s) in accordance with law.

As this order relates to enlargement of the applicant on bail, it is clarified that observations made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observation made in this order."

4. It is further stated that the applicant is in apprehension that he would be arrested for the offence under Section 376-D I.P.C. and Section 5/6 of Protection of Children from Sexual Offences Act, 2012 and as such the present application has been filed for the above quoted relief.

5. In continuation, learned counsel for the applicant has relied upon para 31 of the judgment of Hon'ble Supreme Court in the case of **Pradeep Ram Vs. State of Jharkhand and Another, (2019) 17 SCC 326**. The relevant para is extracted hereinunder.

"31. In view of the foregoing discussions, we arrive at the following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3". The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him

to custody on addition of graver and non-bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail."

7. Upon due consideration of the facts and circumstances of the case and the observations made by Hon'ble Apex Court in the case of **Pradeep Ram (supra)** in para no.31 quoted above including para nos.31.4 wherein the Hon'ble Apex Court said that "in a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail", as also the apprehension of arrest of the applicant, on being confronted, learned counsel for the applicant states that the present petition be consigned to records with liberty to the applicant to avail the remedy as available under law including granting liberty to move a representation before the concerned police officers/officials in the light of the observations/directions of the Hon'ble Apex Court made in the case of **Pradeep Ram (supra)**.

8. The aforesaid prayer has not been opposed by the side opposite.

9. Taking note of the aforesaid, the present application is **consigned to record** with the liberty as prayed for.

Order Date :- 21.11.2024

Anand/-