

Court No. - 64

1. Case :- CRIMINAL MISC. BAIL APPLICATION No. - 22855 of 2022

Applicant :- Farukh@ Bandar

Opposite Party :- State Of U.P.And 3 Others

Counsel for Applicant :- Mohit Kumar Singh,Sujata Choudhary

Counsel for Opposite Party :- G.A.,Shyam Murari Upadhyay

With

2. Case :- APPLICATION U/S 482 No. - 13581 of 2021

Applicant :- Danish And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Aditya Prasad Mishra

Counsel for Opposite Party :- G.A.,Shyam Murari Upadhyay

Hon'ble Samit Gopal,J.

1. The matters have been taken up in the revised list.

2. On 20.1.2025 the following order was passed in Criminal Misc. Bail Application No. 22855 of 2022:-

"1. List revised.

2. Ms. Sujata Choudhary, learned counsel for the applicant, Sri Shyam Murari Upadhyay, learned counsel for the first informant and Sri Shashi Kant Pandey, learned counsel for the State are present and have been heard.

3. A report of the trial court was called for vide order dated 23.09.2024 of this Court. Perusal of the said report dated 19.10.2024 shows that an application under Section 482 Cr.P.C. No. 13581 of 2021 (Danish and three others vs. State of U.P. and another) is pending before this Court due to which the trial of the said accused is stayed.

4. Connect the present bail application with Application U/S 482 Cr.P.C. No. 13581 of 2021 (Danish and three others vs. State of U.P. and another). It would be expedient that both the matters be heard by the same Bench.

5. Let the matter be placed before Hon'ble the Chief Justice for nomination of a Bench to hear the both the matters. The matters be then listed before appropriate Bench on 17.02.2025.

6. Office shall print the details of the said Application U/s 482 Cr.P.C. in the cause list, when the matter is listed next."

3. Subsequently in compliance of the said order dated 20.1.2025, Criminal Misc. Application U/S 482 No.13581 of 2021 was connected with this bail application and placed before Hon'ble The Chief Justice for appropriate orders vide office report dated 06.2.2025. Vide order dated 07.2.2025 of Hon'ble The Chief Justice, the matters have been nominated to this Bench.

4. Order on Criminal Misc. Application U/S 482 No.13581 of 2021, Danish And 3 Others vs. State of U.P. and another.

5. No one appears on behalf of the applicants to press this 482 Cr.P.C. application even in the revised list. Sri Shyam Murari Upadhyay, learned counsel for the opposite party no. 2 and Sri Ram Prakash Shukla, learned counsel for the State are present. Records have been perused.

6. This application has been filed by the applicants Danish, Nadeem, Imran, Salman with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application and quash the entire proceeding of Criminal Case No. 760 of 2020, State versus Danish and others, arising out of Case Crime No. 59 of 2020, U/s 363, 342, 506, 376D, 366, 120B I.P.C., U/s 5/6 and 16/17 POCSO Act, Police Station Lisari Gate, District Meerut including charge sheet dated 29.08.2020 and cognizance order dated 08.10.2020 passed by learned Special Exclusive Judge POCSO Act, Meerut and/or to pass such other and further order which the Hon'ble Court may find fit in the facts and circumstances of the case.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the further proceeding of Criminal Case No. 760 of 2020, State versus Danish and others, arising out of Case Crime No. 59 of 2020, U/s 363, 342, 506, 376D, 366, 120B I.P.C., U/s 5/6 and 16/17 POCSO Act, Police Station Lisari Gate, District Meerut, pending in the court of learned Special Exclusive Judge POCSO Act, Meerut, during the pendency of present application before the Hon'ble court and/or to pass such other and further order which the Hon'ble Court may find fit in the facts and circumstances of the case."

7. Since there is no one present on behalf of the applicants to press this application

even in the revised list, the same is dismissed in non prosecution.

8. Interim order, if any, stands vacated.

9. Pending application(s), if any, shall stand disposed of.

10. Office to communicate this order to the concerned court forthwith.

11. Order on Criminal Misc. Bail Application No. 22855 of 2022 (Farukh@ Bandar vs. State Of U.P. And 3 Others).

12. Heard Ms. Sujata Choudhary, learned counsel for the applicant, Sri Shyam Murari Upadhyay, learned counsel for the opposite party no. 2 and Sri Ram Prakash Shukla, learned counsel for the State and perused the record.

13. This is the second bail application under Section 439 of Code of Criminal Procedure filed by the applicant Farukh@ Bandar, seeking enlargement on bail during trial in connection with Case Crime No.59 of 2020, under Sections 363, 342, 376, 506 I.P.C. and section 3/4 Protection of Children from Sexual Offences Act, 2012, registered at P.S. Lisari Gate, District Meerut.

14. The first bail application of the applicant was rejected by this Court vide order dated 15.7.2021 passed in Criminal Misc. Bail Application No.9396 of 2021.

15. On 23.09.2024 arguments were advanced in the bail application after which a report was called for by this Court from the trial court concerned. The said order dated 23.09.2024 reads as under:-

"1. List revised.

2. Heard Ms. Sujata Choudhary, learned counsel for the applicant, Sri Shyam Murari Upadhyay, learned counsel for the opposite party no.2 / first informant and Sri Shashikant Pandey, learned counsel for the State.

3. This is second bail application of the applicant. The first bail application of the applicant was rejected by this Court vide order dated 15.07.2021 passed in Criminal Misc. Bail Application No. 9396 of 2021 (Farukh @ Bandar vs. State of U.P. and another).

4. The argument of learned counsel for the applicant is regarding the delay in trial by submitting that till date only two witnesses being the first informant and the victim (as P.W.-2) have been examined before the trial court and the applicant is in jail since 18.07.2020.

5. Learned counsel for the applicant placed the statement of P.W.-2 before this Court which is annexed as Annexure-SA-1 to the supplementary affidavit dated 05.12.2023.

6. A perusal of the said statement goes to show that the said victim was gang raped. The matter is proceeding under Sections 363, 342, 376, 506 I.P.C. and Section 3/4 POCSO Act.

7. Let the trial court concerned give its report whether the matter is proceedings under Section 376-D I.P.C. (gang rape) or not within a period of two weeks from today. The trial court shall further intimate this Court regarding status of trial, the number of witnesses to be examined, number of witnesses examined in trial, the reason for delay in trial and the approximate time which is expected to take for conclusion of the trial within the said period.

8. Let the matter be listed on 25.10.2024.

9. Office to communicate this order to the court concerned within a period of two weeks from today."

16. Office through its report dated 24.10.2024 has placed on record a report of the trial court concerned, perusal of the same goes to show that vide report dated 19.10.2024 of Additional District and Sessions Judge/Exclusive Court POCSO Act, Meerut duly forwarded by the District Judge, Meerut on the said date, it is reported that charge under Sections 376, 363, 342, 506 I.P.C. and under Sections 3/4 POCSO Act, 2012 has been framed against the applicant Farukh@ Bandar on 20.10.2020. It is further reported that in another file being Special Case No. 760 of 2020, Case Crime No. 59/2020, a supplementary charge sheet has been filed against the co-accused Danish and Salman under Sections 363, 366, 376D, 342, 506, 120B I.P.C. and Sections 5/6 and 16/17 POCSO Act, 2012 and against the co-accused Nadeem, Imran and Smt. Anjoom under Sections 363, 366, 342, 120B I.P.C. It is further reported that the said trial is stayed in compliance of the order dated 12.08.2021 passed in Application U/S 482 No. 13581 of 2021 by this Court. Further regarding status of the trial it is reported that Special Case No. 524 of 2020, Case Crime No. 59/2020, under Sections 376, 363, 342, 506 I.P.C. and 3/4 POCSO Act, 2012, is going on which cognizance on the charge sheet has been taken on 19.8.2020 and charge has been framed on 20.10.2020. The prosecution proposes to examine 07 witnesses in all out of which Smt. Shameena has been examined as P.W.-1 whose testimony is completed on 20.9.2022 whereas the cross-examination of P.W.-2/victim is going on. It is further reported that on 07 dates thereafter, the victim did not attend the trial. The trial court has stated that it shall make its endeavour to conclude the trial at the earliest.

17. Learned counsel for the applicant submitted that in the trial P.W.-1/Smt. Shameena and P.W.-2/the victim have been examined. It is submitted that trial after the same has not proceeded and no other witness has been examined. It is further submitted that the applicant is in jail since 18.7.2020 and as such looking to the delay in trial and the fact that the trial will take a lot of time, the applicant be directed to be released on bail.

18. Per contra, learned State counsel and learned counsel for the first informant vehemently opposed the prayer in the present second bail. It is submitted that the first bail application of the applicant was rejected by this Court vide order dated 15.7.2021 on merits. It is further submitted that the victim is aged about 12 years and in the trial the first informant/Smt. Shameena has been examined as P.W.-1 and the victim has been examined as P.W.-2. The both witnesses have supported the prosecution case. It is submitted further that the victim in specific terms has levelled allegation of rape against the applicant at the first instance after forcibly taking her to Delhi and then again taking her to his house where the applicant Farukh@Bandar, Nadeem and Salman again committed rape upon her. It is submitted that as such implication of the applicant is there. It is submitted that prayer for bail be rejected.

19. After having heard learned counsels for the parties and perusing the record, it is evident that this is the second bail application. The first bail application of the applicant was rejected by this Court vide order dated 15.7.2021. The said order reads as under:-

"Heard Sri Krishnakant Dubey, Advocate holding brief of Sri Anand Prakash Dubey, learned counsel for the applicant and Sri V.B. Upadhyay, learned A.G.A. for the State and perused the material on record.

Vide order dated 23.02.2021, notice was issued to the opposite party No. 2. As per the office report dated 23.03.2021, a report regarding service of notice has been received. The report dated 20.03.2021 of the Chief Judicial Magistrate, Meerut is on record which states that notice has been served on the opposite party No. 2. No one appears on behalf of the opposite party No. 2.

This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Farukh @ Bandar, seeking enlargement on bail during trial in connection with Case Crime No. 59 of 2020, under Sections 363, 342, 376, 506 I.P.C. and 3/4 Protection of Children from Sexual Offences Act, registered at Police Station Lisarigate, District Meerut.

Learned counsel for the applicant argued that the applicant has been falsely implicated in the present matter. It is argued that the mother of the victim is a lady of bad character and thus for the purpose of blackmailing the applicant and other accused persons, the present first information report has been registered to falsely implicate the accused. The said argument is raised on the basis of the statement of one of the victims recorded under Section 161 Cr.P.C. It is argued that the said victim has also stated that there was no rape committed on her and lodging of the first information report by her mother is false. It is argued

that the second victim under pressure of the mother has stated that rape was committed upon her by the applicant. Learned counsel has stated that the victims have been recovered by the police who are hail and hearty. It is argued that as such, the implication of the applicant is false. It is further argued that the applicant and four other co-accused persons had challenged the present first information report before this Court in a writ petition being Criminal Misc. Writ Petition No. 5449 of 2020 (Danish and 04 others vs. State of U.P. and 2 others) in which vide order dated 16.06.2020, the arrest of the petitioners therein was stayed. The copy of the said order is annexed as Annexure-9 to the affidavit. It is argued that subsequently, the writ petition was dismissed as having become infructuous as the charge-sheet has been submitted. It is argued that the applicant has no criminal history as stated in para 19 and is in jail since 18.07.2020.

Per contra learned A.G.A vehemently opposed the prayer for bail and argued that in the first information report, there is a specific allegation against the applicant of committing rape upon one of the victim girls who was a minor. It is further argued that even the medical examination report of the said victim girl, the copy of which is annexed as Annexure-7 to the affidavit and the opinion of the doctor, therein, clearly shows that sexual assault cannot be ruled out on the said victim. It is next argued that the victim girl was a minor and she was stated to be 12 years of age in the first information report. It is argued that as such, the matter is serious in nature and the prayer for bail be rejected.

After having heard learned counsel for the parties and perusing the record, it is apparent that there are allegations of rape against the applicant. There is a specific allegation of the applicant committing rape on a girl who is stated to be 12 years of age in the first information report and even the doctor did not dispute the fact that rape was not committed and sexual assault cannot be ruled out on her. The applicant is named in the first information report and in the statements of the victim recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C.

Looking to the facts and circumstances of the case, I do not find it a fit case for bail, hence, the bail application is rejected.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

The computer generated copy of such order shall be self attested by the counsel of the party concerned.

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."

20. The trial in the matter is going on in which two witnesses have been examined being the first informant and the victim. Both witnesses have supported the prosecution case. Supplementary charge sheet against the co-accused Danish and Salman under Sections 363, 366, 376D, 342, 506, 120B I.P.C. and Sections 5/6 and 16/17 POCSO Act, 2012 and against the co-accused Nadeem, Imran and Smt. Anjoom under Sections 363, 366, 342, 120B I.P.C. and this matter also is being tried for gang rape. The statement of the victim implicates the applicant. The matter is grievous in nature. The victim is a minor girl.

21. Looking to the facts and circumstances of the case, no ground for bail is made out.

22. Accordingly, the present second bail application is rejected.

23. However, the trial court may proceed with the trial expeditiously.

24. Pending application(s), if any, shall stand disposed of.

(Samit Gopal,J.)

Order Date :- 15.5.2025

Naresh