

Malkhan Pandey S/O Karinga @Haridas ... vs State Of U.P. Thru. Its Prin. Secy. Home ... on 16 October, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2023:AHC-LK0:67740

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8605 of 2022

Applicant :- Malkhan Pandey S/O Karinga @Haridas Pandey

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

Counsel for Applicant :- Satyendra Kumar Tripathi, Sandhya Dubey, Sudha Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the communication sent by the Chief Judicial Magistrate, Balrampur dated 25.08.2022 and the communication of the S.H.O. dated 16.08.2022 Police Station- Laliya, District Balrampur, placed as C.A. No.1 to the counter affidavit filed by the State, the opposite party no.2 has been sufficiently served, however, no one is present on behalf of opposite party no.2.
2. Heard Ms. Harshita Awasthi, Advocate holding brief for Ms. Sandhya Dubey, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant-Malkhan Pandey for grant of bail, in Case Crime No.53 of 2020, under Sections 363, 366-A, 368, 372, 376 I.P.C. & Section 3/4 POCSO Act & Section 3(2)(V) SC/ST Act, Police Station Laliya, District Balrampur, during trial.
4. Learned counsel appearing for the accused-applicant while pressing the bail application submits

that applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution. The FIR of the present case has been lodged by the father of the prosecutrix on 26.03.2020 at Police Station- Laliya, District Balrampur, pertaining to incident occurred seven years before, on 01.01.2013 at 09:00 A.M., alleging that on the relevant date and time, the prosecutrix had left her home and thereafter could not be traced. The statement of the prosecutrix was recorded under Sections 161 and 164 CrPC wherein she, though had stated to have met at first with the instant applicant but had not imputed any allegation of rape to him. Learned advocate submits that in the statements of the prosecutrix recorded under Section 161 and 164 CrPC, it is stated by the victim that after coming in touch with the applicant, the prosecutrix had gone to his house and thereafter, she was taken to the house of the sister of the applicant and on her (sister of the applicant) assurance she consented for her marriage with one Sudesh and her marriage was solemnized with Sudesh. Thereafter, some differences had arisen between her and the family members of Sudesh and thereafter, her marriage was solemnized with some other person, who was working in Balrampur Chini Mill and ultimately, she was detained by the police at Bareilly and was lodged in welfare home. On a specific query put by the Investigating Officer, she replied that it was only Sudesh who had made sexual relations with her.

5. It is further submitted that it is admitted to the prosecutrix that apart from Sudesh no one had made sexual relations with her. Identically placed co-accused persons namely Ghanshyam Mishra, Om Prakash Yadav as well as Sudesh Mishra with whom she was married, had been granted bail by the trial court vide orders dated 28.01.2021, 01.01.2021 and 22.12.2020 passed in bail application No.10 of 2021, bail application No.01 of 2021 and bail application No.51 of 2020, respectively.

6. It is next submitted that on behalf of the applicant that applicant is detained in this case since 27.10.2021. Applicant has Criminal history of one case with Case Crime No.1480 of 2009 under Sections 302, 147,148 I.P.C., which has been explained in paragraph 20 of this bail application, in which the applicant has already been granted bail by a co-ordinate bench of this Court, vide order dated 09.04.2010 passed in Criminal Misc. Bail Application No.2700 of 2010. It is further submitted that there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

7. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix had left her home in the year 2013 and thereafter she had first met with the applicant and her marriage was solemnized with one Sudesh and she could not continue good relations with him and thereafter her marriage was solemnized with another person, however, no allegation of rape has been leveled by her against the applicant and it has been categorically stated that it was only Sudesh with whom she had made sexual relations. The two other co-accused persons namely Ghanshyam Mishra and Om Prakash Yadav alongwith Sudesh Mishra, to whom the role of committing sexual assault has been leveled, have already been granted bail. Charge-sheet in this

case has already been filed. Applicant is in jail in this case since 27.10.2021 with criminal history of one other case which has been duly explained in paragraph 20 of this bail application. The presence of the applicant could be secured before the trial court by placing adequate conditions.

9. Having regard to the overall facts and circumstances of the case and 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.

10. Let the accused/applicant- Malkhan Pandey 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 not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

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

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

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

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

13. 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 of this Court on the merits of the case.

Order Date :- 16.10.2023 Vipul