

Rajkaran Patel vs State Of U.P. on 17 May, 2023

Author: Samit Gopal

Bench: Samit Gopal

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2023:AHC:104681

Reserved on : 05.05

Delivered

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 53377 of 2022

Applicant :- Rajkaran Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Autar Verma, Amarjeet Singh, Vivek Mishra

Counsel for Opposite Party :- G.A., Vinod Kumar Sahu

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Ram Autar Verma, Sri Vivek Mishra and Sri Amarjeet Singh, learned counsels for the applicant, Sri Vinod Kumar Sahu, learned panel counsel for the High Legal Service Committee and Sri U.P. Singh, learned Additional Government Advocate for the State of U.P. and perused the records.

3. This second bail application under Section 439 of Code of Criminal Procedure, 1973 has been filed by the applicant Rajkaran Patel, seeking enlargement on bail during trial in connection with Sessions Trial No. 31 of 2022 (State Vs. Rajkaran Patel and others) arising out of Case Crime No. 198 of 2021, under Sections 366, 376, 354-A, 328, 323, 504, 506 IPC, registered at P.S. Civil Lines, District Prayagraj, pending in the court of learned Additional Sessions Judge-II/FTC, Allahabad.

4. The first bail application of the applicant was rejected by this Court vide order dated 26.05.2022 passed in Criminal Misc. Bail Application No. 48511 of 2021 (Rajkaran Patel Vs. State of U.P.).

5. Learned counsels for the applicant argued that the present second bail application has although been filed on behalf of the applicant without any change in circumstances but there are fresh and new grounds which have been pleaded and are to be argued. It is submitted that a second bail application is maintainable in view of the judgment of the Apex Court in the case of Babu Singh and others Vs. State of U.P. : AIR 1978 SC 527 and also in view of the judgment of a Division Bench of this Court in the case of Dal Chand and others Vs. State of U.P. : 2000 Cri LJ 4579. It is submitted that the Apex Court has held that a second bail application on a later occasion would be maintainable giving more material, further developments and different considerations. It is submitted that the Division Bench of this Court has while following the said judgment of the Apex Court in the case of Babu Singh (supra) held the same while answering a question referred to it.

6. It is next argued while placing para 20(q) of the affidavit in support of the bail application that the applicant has been falsely implicated in the present case. The reason for false implication is a matrimonial dispute which has turned into the present dispute out of proportion. Karuna Pati Patel the father of the victim used to bring cases of his area to the applicant for being filed in the High Court. The victim as per her statement recorded under Section 164 Cr.P.C. has stated that she has come to the chamber of the applicant for the first time on 03.01.2020 at Chhota Baghara, Prayagraj so that she may start her legal practice after getting her degree of LL.B. After her admission in the 1st year on 28.12.2020, the victim started to mount pressure on the applicant to marry Shivraj Patel the son of the applicant with herself and keep her with him as his junior after which she would attend the High Court as an Advocate even though she was not holding a degree and was not registered in the Bar Council to which the applicant did not agree and in so far as the proposal for marriage is concerned, the same was discussed by the applicant with his wife and his son after which it was rejected which caused bitterness in the relationship between him and the victim and her father, after which her father asked for return of all the professional files for engaging another counsel which would be managed through the victim to which the applicant refused by stating that he would return them only after the consent of the clients. Her father threatened the applicant of dire consequences including false implication in criminal cases and as such the applicant has been implicated in the present case.

7. It is further argued that in so far as the co-accused Sipahilal Shukla, Advocate is concerned, he has also been falsely implicated in the present case due to the fact that he had tried to persuade the victim and her father not to take such extreme steps in such a petty matter but the persuasion fell on deaf ears. The matter could not be settled after which the present FIR was lodged against the applicant and Sipahilal Shukla on 07.04.2021 with false allegations.

8. Further, learned counsels for the applicant while placing paragraph nos. 21 to 24 of the affidavit in support of the bail application have argued that the story as narrated by the victim in her statement recorded under Section 164 Cr.P.C. is a false and cooked up story inasmuch as it is stated that she was administered poison but the poisoning was actually in the month of July, 2020. It is further submitted that even in so far as the allegations of the victim getting pregnant due to the illegal acts of the applicant and her being administered medicine for abortion is concerned, the same is false and concocted story. It is further submitted that one Km. Rakhi is stated to be a person who had helped the victim when she met her on 29.06.2021. It is submitted that the victim and Km. Rakhi are persons who have formed a gang of Advocates and are entangling people in fake cases for extorting money from them. It is argued that a co-ordinate Bench of this Court has vide order dated 18.08.2022 which is annexed as annexure 20 to the affidavit passed in a 482 application being Crl. Misc. Application u/s 482 No. 20438 of 2022 (Nikki Devi Vs. State of U.P. and another) has directed the CBI to conduct preliminary enquiry in 47 cases as per directions contained in para 12 of the said order.

9. Learned counsels have further while placing the copy of the order sheet of the trial court from 12.01.2022 to 02.01.2023 which is annexure S.A. 1 to the supplementary affidavit dated 16.01.2023 submitted that the case was committed to the Court of Sessions on 12.01.2022 but till date charges in the matter have not been framed. It is submitted that the applicant is in jail since 25.09.2021. The applicant be enlarged on bail.

10. Per contra, learned panel counsel appearing for the High Court Legal Service Committee on behalf of the victim submitted that the first bail application of the applicant has been rejected by this Court on merits vide order dated 26.05.2022. It is submitted while placing para 29 of the affidavit in support of the bail application that totally false and baseless allegations have been levelled in the said paragraph that the victim has told the applicant that she would give her testimony in the trial court in his favour for which she demanded Rs. 10 lakhs on which the applicant showed his inability to fulfill the same. It is submitted that to the contrary the victim is being threatened by various persons on behalf of the applicant despite the fact that the applicant is in jail. It is submitted that the present bail application which is the second bail application has been filed without any fresh and new ground. It is argued that all the grounds as taken were available at the time of hearing of the first bail application. It is submitted that there is no subsequent development after rejection of the first bail application which would entitle the applicant to file a second bail application. It is submitted that the statement of the victim recorded under Section 164 Cr.P.C. fully corroborates the prosecution version. Merely by stating that the allegations therein are false and incorrect, does not at this stage entitle the applicant for grant of bail. It is submitted that the said statement of the victim was considered in extenso by this Court while deciding the first bail application. It is further submitted that in so far as the version of the victim is concerned, the same also finds corroboration from the narration given by her to the Medical Officer who conducted her medical examination on 02.07.2021. It is submitted that the applicant is a professional and is practising a noble profession of being an Advocate. He has indulged in an act that too with a girl who is also aspiring to join the noble profession. It is submitted that the present bail application is devoid of any merit and deserves to be dismissed.

11. Learned counsel for the State also opposed the prayer for bail vehemently by adopting the arguments of learned panel counsel for the High Court Legal Service Committee on behalf of the victim. It is further argued that the charge sheet in the matter has been submitted against the applicant on 19.11.2021. The first bail application of the applicant was decided after submission of charge sheet by considering all the material collected during investigation. It is submitted that there is no fresh and new ground in the present second bail application. The first bail application of the applicant has been rejected on merits by a detailed order by this Court. It is submitted that the present second bail application be dismissed.

12. After having heard learned counsels for the parties and perusing the records, it is evident that this is a second bail application. The first bail application of the applicant was rejected by this Court vide order dated 26.05.2022. The same is extracted herein-below:-

"1. Heard Sri Rajiv Lochan Shukla, learned counsel for the applicant, Sri Sukhvir Singh, learned panel counsel for the High Court Legal Service Committee and Sri B.B. Upadhyay, learned counsel for the State and perused the material on record.

2. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant- Rajkaran Patel, seeking enlargement on bail during trial in connection with Case Crime No. 198 of 2021, under Sections 366, 376, 354-A, 328, 323, 504, 506 I.P.C., registered at Police Station Civil Lines, District Prayagraj.

3. The first information report of the present case was lodged on 07.04.2021 at 00:32 hours, under Section 366 I.P.C. by Karunapati Patel against the applicant and Sipahi Lal Shukla in connection with an incident alleged to have taken place on 06.04.2021 at 13:30 hours alleging therein that the first informant is a resident of village Kaudru, Police Station Sarai Inayat, District Prayagraj. His daughter aged about 20 years is a LL.B. student and was practising in the High Court with Rajkaran Patel (the present applicant) who is a resident of Village Sohasha, Police Station Mungra Badshahpur, District Jaunpur who is an Advocate in the High Court. On the day of occurrence at about 1:30 pm from near Alia Law Agency, both the accused persons have enticed away his daughter. The date of birth of his daughter is 15.11.2000. The first information report is thus lodged.

4. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is further argued that the prosecutrix was interrogated under Section 161 Cr.P.C. and also her statement was recorded under Section 164 Cr.P.C. The copy of the statement recorded under Section 161 Cr.P.C. is annexed as Annexure-5 to the affidavit in support of bail application whereas the certified copy of her statement recorded under Section 164 Cr.P.C. is annexed as Annexure-SA-1 to the second supplementary affidavit dated 28.04.2022. Learned counsel has placed before the Court both the statements and has argued that there has been an improvement by the prosecutrix in her statement recorded under Section 164 Cr.P.C. as that of her statement recorded under Section 161 Cr.P.C. It is further

argued that the prosecutrix in her statement recorded under Section 161 Cr.P.C. has not stated of the incident as had been stated to be continuing since long but has not mentioned the actual date and time since when she had been subjected to sexual assault by the applicant. It is argued that when the prosecutrix was brought before the doctor for her medical examination she has although narrated about the entire incident in detail but even therein there is a variation of her version as stated by her in her statements recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. It is further argued that the medical examination of the prosecutrix was conducted on 02.07.2021 whereas as per her version as stated in her statement recorded under Section 161 Cr.P.C., she was assaulted on 29.06.2021 in front of Gate No.5 of the High Court but the doctor although has found one healed injury on her breast and an abrasion on her left arm but had opined that there is no fresh injury. It is argued that connecting the said injury with the present incident would not at all be in favour of the version of the prosecutrix as stated by her.

5. Learned counsel for the applicant further argued that the prosecutrix has stated that she had aborted her pregnancy four times but there is no evidence whatsoever regarding the said allegation and the same can very-well as such be said to be an exaggerated version given by her and as such Section 313 I.P.C. was left out. The applicant was not taken on remand under the said Section vide order dated 17.12.2021, the copy of which is annexed as Anneuxre-SA1 to the supplementary affidavit dated 08.04.2022. It is argued that the prosecutrix has stated in her statements that she had met one Ms. Rakhi on 29.06.2021 but the said person has not been made as a witness in the present case who is said to have helped the prosecutrix as per her own version. Paragraph 23 of the affidavit in support of bail application has been placed to buttress the said argument. It is further argued that the prosecutrix in her statement recorded under Section 164 Cr.P.C. has stated that on 05.04.2021 when she had gone to the High Court, the accused persons met her at a crossing near the High Court, co-accused Sipahi Lal assaulted her and at that time her mobile was connected with her father who was also listening to the same. It is argued that even the said fact is false and incorrect as there is no reference about it in the present first information report which has been lodged after 02 days of the alleged incident of her being beaten up. It is argued that the prosecutrix is a major girl. She as per her own version used to come to the High Court with an Advocate and was working with him and as such was in the knowledge of legal proceedings. She kept on changing and improving her version. The applicant is having criminal history of one case which has been disclosed and explained in paragraph 15 of the affidavit but in the said case till date although it is of the year 2019, he has not received any summons or any notice from the police or any court. The applicant is in jail since 25.09.2021.

6. Per contra, learned panel counsel for the High Court Legal Service Committee and learned counsel for the State have vehemently opposed the prayer for bail and argued that the applicant is named in the first information report. The prosecutrix has in her

statements recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. named the applicant and has assigned specific role to him. It is argued that the allegation that the prosecutrix was working with the applicant in the High court in his office is not denied. Even the fact that she was known to him is not denied. It is argued that the present case is such in which an Advocate has exploited a girl who was a law student on the pretext of imparting legal training to her through his office and courts. It is argued that there are serious allegations against the applicant. The prosecutrix has stated of the applicant exploiting her at the initial stage and then committing sexual assault on her. She has explained the circumstances under which she was being threatened and was continued to be exploited. In so far as the physical assault is concerned, the doctor has found injuries on her body which corroborate with her version. It is further argued that during investigation, the police added Shivraj Patel, Dheerendra Kumar Saroj and Saroj Devi as accused but as of now charge-sheet being Charge Sheet No. 01 dated 18.11.2021 has been filed only against Shivraj Patel and the present applicant but in so far as the investigation with regards to the other accused persons is concerned, the same is pending. It is further argued that since the applicant is an Advocate, if released on bail, there are chances of his tampering with evidence and may influence the investigation as the investigation for other accused persons is pending. The prayer for bail be thus rejected.

7. Learned counsel appearing for the High Court Legal Service Committee has further informed the Court that the applicant is involved in another case being Case Crime No. 193 of 2021, Police Station Civil Lines, District Allahabad which has not been disclosed and explained in the bail application. In so far as the disclosure in paragraph 15 of the affidavit regarding one criminal history of the applicant is concerned, it is argued by producing the photocopy of the said first information report that the applicant is named in the first information report along with four other unknown persons.

8. After having heard the learned counsel for the parties and perusing the record, it is evident that the applicant is named in the first information report, in the statements of the prosecutrix recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. The name of the applicant and the role assigned to him is consistent throughout. The allegations are of sexual assault and physical assault upon the prosecutrix which had continued for a substantial long period. The prosecutrix was junior in the office of the applicant. The allegations are against a person practising law and is a person in uniform involved in a noble profession. The office of a lawyer is not less respected than Courts of law. The act as complained of by her against the applicant is told by her in detail in her statements recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. There has been no reason spelt out as to why the applicant is being falsely implicated. The investigation for other accused persons is pending and the apprehension of learned counsels for the State and of the panel lawyer of High Court Legal Service Committee of the applicant being in a position to influence the investigation and tamper with the evidence cannot be ruled out at this stage.

9. 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.

10. This Court has vide order dated 08.04.2022 directed the District and Sessions Judge, Prayagraj to send the statement of the prosecutrix recorded under Section 164 Cr.P.C. from the concerned Court. As per the office report dated 25.4.2022, the compliance of the order has been done and a sealed envelope has been received. The said envelope was opened on the directions of the Court by the Bench Secretary during arguments.

11. After conclusion of the arguments, this Court directed the Bench Secretary of this Court to seal the same which has been sealed. The Registrar General is directed to remit back the said sealed envelope to the District and Sessions Judge, Prayagraj, within three days from today, who shall place the same at its appropriate place."

13. Although a second bail application on behalf of the accused is not barred and is maintainable but considerations of the grounds of bail are the factors to be taken into account in it. A second bail application is always considered on fresh and new grounds available to the accused after rejection of the first bail application. It cannot be said that a second bail application would not be maintainable. The maintainability of such bail application is there but consideration of the prayer for bail is subject to the availability of fresh and new grounds which if not available would render reviewing the earlier order rejecting the bail application. In the case of Babu Singh (supra), the Court was considering a bail application of an accused who was acquitted by the Sessions Court against which the State had filed an appeal against acquittal in the High Court which was successful and the findings of the Sessions Judge were reversed holding the accused persons guilty and sentencing them for the offences. Against the said judgment and order of the High Court, a statutory appeal was carried to the Apex Court. Before the Apex Court, a second bail application was filed which was the consideration in which the said judgment and order has been passed. The Apex Court with regards to the maintainability of a second bail application held that an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations.

14. The Division Bench of this Court in the case of Dal Chand (supra) was deciding a reference made by a single Judge Bench as to whether a second bail application at the instance of a convicted accused in a pending appeal, is maintainable or not.

15. The Division Bench vide the said judgment and order while answering the reference and relying upon the judgment of the Apex Court in the case of Babu Singh (supra) held that a second application for bail at the instance of a convicted accused, is maintainable in a criminal appeal.

16. In so far as the part of the maintainability of a second bail application is concerned, it is no more res-integra that the same is maintainable. The question which arises is whether without any fresh new and changed circumstances, a Court should consider a subsequent bail application ignoring its previous order rejecting the previous bail application or not.

17. In the opinion of the Court, the same would not be possible. A subsequent bail application is maintainable but consideration of the prayer of bail would depend on the facts as to whether fresh and new grounds have been pleaded and are available or not.

18. In the case of State of Maharashtra Vs. Buddhikota Subha Rao : 1989 Supp (2) SCC 605 it has been held by the Apex Court that once a bail application was rejected there was no question of granting a similar prayer. Granting it would be virtually overruling the earlier decision without there being a change in the fact-situation. A substantial change is one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. It has been held as under :-

"7. Liberty occupies a place of pride in our socio-political order. And who knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. That is why they provided in Article 21 of the Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore that the personal liberty of an individual can be curbed by procedure established by law. The Code of Criminal Procedure, 1973, is one such procedural law. That law permits curtailment of liberty of anti-social and anti-national elements. Article 22 casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of a crime against society or the Nation. In cases of undertrials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made, mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retribution, etc. In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such Application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6-6-1989. Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No. 995 of 1989 otherwise he would have disposed it of by the very same common order. Before the ink was dry on Puranik, J.'s order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J.; in fact there is a reference to the same in the impugned order. Could this be done in the absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein. Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision

and not merely cosmetic changes which are of little or no consequence. Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline, propriety and comity demanded that the impugned order should not have been passed reversing all earlier orders including the one rendered by Puranik, J., only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order which had hitherto eluded him. In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency. In their view that we take we are fortified by the observations of this Court in para 5 of the judgment in *Shahzad Hasan Khan v. Ishtiaq Hasan Khan* [(1987) 2 SCC 684] . For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary'. Judicial restraint demands that we say no more.

(emphasis supplied)

19. A Division Bench of this Court in the case of *Satya Pal Vs. State of U.P.* : 1998 SCC OnLine All 1224 : (1998) 37 ACC 287 was deciding a question referred to by a single Judge Bench whether a fresh argument which was available earlier should be allowed to be advanced in a second bail application. The question as before the Division Bench was as follows :-

"1. The following question has been referred by learned single Judge to be decided by this Court:--

"Whether a fresh argument in a second bail application for an accused should be allowed to be advanced on those very facts that were available to the accused while the first bail application was moved and rejected".

The Division Bench held that a fresh argument in a second bail application cannot be allowed to be advanced on those very facts which were available to the accused at the time of the moving and rejection of the first bail application. The answer as given to the referred question is as follows :-

"9. Accordingly our answer to the question referred is that fresh arguments in a second bail application for an accused cannot be allowed to be advanced on those very facts that were available to the accused while the first bail application was moved and rejected."

20. The Apex Court in the case of State of M.P. Vs. Kajad : (2001) 7 SCC 673 has held that although successive bail applications are permissible but under changed circumstances. It has been held as under :-

"8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Miscellaneous Case No. 2052 of 2000 on 5-6-2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] and various other judgments."

21. Further, the Apex Court in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan : (2005) 2 SCC 42 has held that subsequent bail application can be filed if there is a change in the fact situation or law which would render the previous view obsolete. The Court rejected the argument that successive bail application can be filed on a ground already rejected by courts earlier and it would not be violative of Article 21 of the Constitution of India. It has been held as under :-

"8. On 23-9-2002 the accused-respondent moved the eighth bail application which came to be allowed by the High Court by its order dated 23-5-2003 solely on the ground that the accused-respondent had undergone incarceration for a period of 3 years and that there was no likelihood of the trial being concluded in the near future and an appeal filed against the said grant of bail came to be allowed [Ed.: In Kalyan Chandra Sarkar v. Rajesh Ranjan, op. cit. fn. 2, above] on the ground that the High Court could not have allowed the bail application on the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of prima facie case, gravity of offence, and the allegation of tampering with the witness by threat and inducement when on bail. This Court held [Ed.: In Kalyan Chandra Sarkar v. Rajesh Ranjan, op. cit. fn. 2, above] that since the above factors go to the root of the right of the accused to seek bail, non-consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order of the High Court granting bail. This Court also observed that though an accused had a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. This Court in that order also found fault with the High Court for not

recording any fresh grounds while granting bail and for not taking into consideration the basis on which earlier bail applications were rejected. The Court also emphasised in the said order that ignoring the earlier orders of this Court is violative of the principle of binding nature of the judgments of the superior court rendered in a lis between the same parties, and noted that such approach of the High Court in effect amounts to ignoring or overruling and thus rendering ineffective the principles enunciated in the earlier orders especially of the superior courts. On that basis, the appeal of the complainant challenging the grant of bail came to be allowed cancelling the bail granted to the respondent. This order of this Court is reported as Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977]."

***** "20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by the courts earlier, including the Apex Court of the country."

(emphasis supplied)"

22. Now reverting back to the present case, an effort has been made to spell out the reason for false implication while placing para 20(q) of the affidavit. The same is merely a version of the accused applicant. In so far as, the other arguments relating to the falsity of the statement of the victim recorded under Section 164 Cr.P.C. by clubbing it with the event of administering poison is concerned, the said statement has been considered by this Court while deciding the first bail application and as such there is no occasion to reconsider it. If there is any contradiction in it with regards to the version as in the First Information Report and also any argument is being raised to discredit the same it has to be judged in trial only after evidence.

23. With regards to the argument of Km. Rakhi and the order of a co-ordinate Bench of this Court dated 18.08.2022 directing certain matters to be preliminarily enquired into by the CBI is concerned, although the victim referred to Km. Rakhi in her statement recorded under Section 164 Cr.P.C. but even as has been observed in the order rejecting the first bail application of the applicant, Km. Rakhi has not been arrayed as a witness in any of the capacities in the list of witnesses of charge sheet on which the prosecution relies for its case. If she, her conduct, her status or her acts, if any, have to be considered, the same may be subject matter of trial. At the stage of consideration of bail, the Court can only go into the question of the case being prima

facie established for granting bail. It cannot go into the question of credibility and reliability of the witness/es put up by the prosecution. The question of credibility and reliability of witness/es can only be tested during trial. The order sheet of the trial court which is in the supplementary affidavit although shows that the case has been committed to the Court of Session on 12.01.2022 but the same is pending till date but charge in the present matter has not been framed despite the same being fixed for framing of charge since 07.05.2022 as is evident from the order sheet of the said date.

24. Considering the arguments of learned counsels for the parties, perusing the records and the law on the issue, there is no fresh and new ground available in the present second bail application. This Court does not find any substantial change in the circumstance so far as merit of the case is concerned. This Court does not find it a fit case for bail.

25. The bail application is, accordingly, rejected.

26. However, the trial court may take up the trial and proceed with it in accordance with Section 309 Cr.P.C., subject to any legal impediment.

The applicant may file this order before the trial court within two weeks from today.

Order Date :- 17.05.2023 M. ARIF (Samit Gopal, J.)