

## **Badkau vs State Of U.P. Thru. Prin. Secy. Deptt. ... on 16 August, 2023**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2023:AHC-LK0:54185

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9675 of 2023

Applicant :- Badkau

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

Counsel for Applicant :- Firoz Ahmad Khan

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Counter affidavit filed on behalf of State, is taken on record.
2. Heard Sri Firoz Ahmad Khan, learned counsel for the applicant and Sri Diwakar Singh learned A.G.A. for the State.
3. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No. 164 of 2022 under sections 363, 366, 376 IPC and Section 3(2) (V) SC/ST Act & Section 3/4 of the Protection of Children from Sexual Offenses Act, Police Station Khargupur, District Gonda.
4. Learned counsel for the applicant has invited attention towards the statement of the prosecutrix recorded under section 164 Cr.P.C. in which she has levelled allegation against co-accused Bhaijaan and his wife. The prosecutrix has deposed before the court that they had taken forcibly to some

unknown place and left her at Dargah and thereafter she returned back to her house. Learned counsel for the applicant has submitted that the prosecutrix has not made any allegation of rape against the applicant in the statement recorded under section 164 Cr.P.C. before the court. Learned counsel for the applicant has further submitted that earlier also FIR was lodged against the applicant in case crime no.30 of 2022 under section 363 IPC and 3(2)(Va) of SC/ST Act, Police Station Khargupur District Gonda and the applicant was granted bail in the aforesaid case vide order dated 31.01.2023 passed in Criminal Appeal No.2566 of 2022. It has been submitted by learned counsel for the applicant that the prosecutrix and her family members are repeatedly implicating the applicant and his family members just to harass him. He has also submitted that on 20.07.022 the prosecutrix has refused to get her medical examination and after three months i.e. on 13.10.2022 her medical was conducted. It has been submitted by learned counsel for the applicant that after such a long lapse of time i.e. three months medical examination of the prosecutrix has been done that too on the given fact that she had earlier refused on 20.07.2022, therefore, the prosecution case has become highly doubtful. Though the prosecutrix is minor but looking into the facts and circumstances particularly the statement of the prosecutrix recorded under section 164 Cr.P.C. as well as her first refusal for medical examination, it is the fit case for granting bail to the applicant. The applicant is in jail since 19.07.2022.

5. On the other hand, Sri Diwakar Singh, Learned A.G.A. has opposed the prayer for bail and has submitted that the medical which was conducted on 13.10.2022, the prosecutrix has named the applicant as such the applicant is not entitled for bail.

6. Without expressing any opinion on the merits of the case and after hearing learned counsel for the parties and looking into overall facts and circumstances of the case as well as the argument that the prosecutrix has not levelled the allegation of rape against the applicant under section 164 Cr.P.C. and the prosecutrix has refused to get her medical examination on 20.07.2022 and after three months her medical examination was conducted which is highly doubtful and the argument that earlier also the applicant has been implicated by the same prosecutrix under section 363 IPC and 3(2)(Va) of SC/ST Act, therefore, I am of the opinion that the applicant is entitled to be released on bail.

7. Let the applicant, namely, Badkau, be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) 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.

(iv) The applicant shall remain present, in person, before the trial court on the dates 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.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 16.8.2023 dk/