

Court No. - 76

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6105 of 2021

Applicant :- Akhlaq Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Abdul Mazeed

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh-I,J.

Heard Sri Abdul Mazeed, learned counsel for the applicant and Sri G. P. Singh, learned A.G.A. for the State and perused the record.

This Bail Application (under Section 439 Cr.P.C.) has been moved for seeking bail in Case Crime No. 888 of 2019, under Sections 376-D, 506 & 341 of I.P.C. and Section 67A of I.T. Act, P.S. Bahedi, District Bareilly.

As per F.I.R., which was lodged by Jalil Ahmad, it has been stated that on 17.11.2019, at about 02:00PM, his daughter Seema aged about 17 years and niece Arshi aged about 14 years had gone to Nange Miya for the purpose of treatment. On the way, co-accused Wasim had lifted them away to a field of sugarcane where on the pistol point all the accused named in the F.I.R. had committed rape upon both victims and video clipping was also made and all the accused had threatened both victims that in case any complaint was made, video clipping would be made viral.

It has been argued by the learned counsel for the accused applicant that accused applicant has been falsely implicated in this case due to some land dispute between father of the applicant and father of the victim. It is further argued that the radiological age of the victim Seema is found to be 20 years and the age of other victim Arshi is found to be 18 years. As per medical examination report, no external injury is found to have been sustained by both victims but their hymen was found old torn and healed. It is further argued that in statement under Section 164 Cr.P.C., both victims have taken the name of accused applicant being involved in commission of rape but in statement before the court below as PW1, victim Seema has taken the name of co-accused Nazim and Wasim only while regarding rest of the accused, she stated that she had seen them for the first time and turned hostile. The other victim Arshi as PW-2 has taken the name of co-accused Wasim only who had committed rape upon her and her sister while regarding rest of

accused, she stated that she did not know them and turned hostile. The accused applicant has no criminal history; he is in jail since 22.11.2019; if the accused is released on bail, he will not misuse the liberty of bail.

Learned A.G.A. has opposed the bail but has not controverted the aforesaid facts.

Looking to the fact that both the victims have turned hostile before the trial court, considering the quantum of the punishment, nature of the offence and period of detention in jail, without expressing any opinion on the merits, this case is found to be a fit case for bail.

Let the applicant **Akhlaq Khan** involved in aforesaid crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions that :-

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.
2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.
3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

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

Taking into consideration that Covid-19 is continuing and due to which certified copy would not be possible to be obtained by the applicant, therefore, if a copy of this order downloaded from the official website of Allahabad High Court and self attested by the counsel for the applicant is placed before the Court, the same would be entertained.

The case of the accused applicant is distinguished from the co-accused Nazim and Wasim.

Order Date :- 2.2.2021

VPS