

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 598 of 2022

Applicant :- Sufal Rawat

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

Counsel for Applicant :- Shaiphali Nag

Counsel for Opposite Party :- G.A.,Rajesh Kumar

Hon'ble Ram Krishna Gautam,J.

Heard over bail application moved by applicant, Sufal Rawat, in Case Crime No. 658 of 2016 (S.T. No. 197 of 2017), under Sections 302, 201, 354A, 354C IPC 5m/6 of Protection of Children from Sexual Offences Act, Police Station-Gosaiganj, District-Lucknow.

Learned counsel for the applicant argued that the accused-applicant is innocent; he has been falsely implicated in this very case crime number and is languishing in jail since 14.12.2016; he is of no criminal antecedent and there is no likelihood of fleeing from course of justice or tempering with evidence in case of release on bail. Occurrence was of 10.12.2016, it was instantly reported after three hours at 10.30 PM, on 10.12.2016, against Vikki son of Sant Ram, by informant Rakesh Kumar Rawat, for offences punishable under Sections 376-A, 302, 201 IPC read with section 3/5M of POCSO Act, wherein, it was specifically said that wife of informant, Rajrani, while being in search of her daughter, aged about 10 years, rushed to mustered field and she found dead body of her daughter; Vikki son of Santram, who had previously tortured and extended threats to deceased, was running from the scene; same was the situation, in statement under Section 161 Cr.P.C., but, subsequently, name of applicant was surfaced as it was said by those witnesses and on the basis of confession, made by applicant, under Section 164 Cr.P.C., and before it, before police personnel, applicant was substituted in place of Vikki. Whereas, statement under Section 164 Cr.P.C. itself reveals that it was given under allurement of Inspector of Police, with this assurance that if, he admits the guilt, he will not be roped in criminal proceeding; it was not confession, rather it was a statement under threat and allurement of police; except this confession, neither there is any evidence nor any recovery from applicant; informant, in his testimony as PW-1, and wife of informant as PW-2, recorded before trial court, have categorically said that it was Vikki, who ran from the spot and it was Vikki, who had extended threats and tortured previously; but, it was a misidentity by wife of

informant and it was Sufal Rawat, present applicant, who had committed this offence and this is on the basis of this confession made before police; whereas, the extension of threats and torture, prior to this occurrence, was said to be given by Vikki; Vikki is moneyed man having landed property and having his influence, as was said by informant in his testimony, that's why informant kept mum with regard to torture given by him and applicant is poor labourer, working at premises of Vikki, hence being a moneyed man Vikki managed to substitute applicant under his muscle and money power and connivance with police, for this offence of murder of tiny girl of 10 years of age. Hence, bail has been prayed for.

Learned AGA has vehemently opposed, but could not oppose this fact that the applicant is of no criminal antecedent; he is in jail since 2016; for all those six years, trial could not be concluded and he was not named in FIR nor in statement under Section 161 Cr.P.C.; on the basis of statement given as a confession to police and to Magistrate under Section 164 Cr.P.C., he has been implicated, but confession, said to be recorded under Section 164 Cr.P.C., is with specific mention that it was under allurements and assurance given by Inspector of Police that if he admits the guilt, there will be no punitive action against him, hence confession is not a free and voluntarily confession and there is no recovery in lieu of above confession.

Having heard and gone through materials placed on record, it is apparent that applicant is of no criminal antecedent; he was neither named in FIR nor in statement under Section 161 Cr.P.C., rather it was Vikki son of Sant Ram, who was named as accused and previous incident of torture and giving threats was against Vikki Rawat; the confessional statement recorded under Section 164 Cr.P.C. is with allurements and assurance given by Police Inspector; there is no recovery of any incriminating article from or pointing out of applicant.

Considering all above facts and circumstances, the nature of accusations, severity of the punishment in the case of conviction and nature of supporting evidence, reasonable apprehension of tampering with the witness and prima facie case, but, without commenting on merits of the case, a case for bail is made out.

Accordingly, the bail application is allowed.

Let the applicant, **Sufal Rawat**, involved in above mentioned case crime number be released on bail, on his executing a personal bond and two reliable sureties, each, in the like

amount, to the satisfaction of the court concerned, subject to the following conditions:

1. The applicant will not tamper with the evidence.
2. The applicant will not indulge in any criminal activity.
3. The applicant will not pressurize/intimidate the prosecution witnesses and co-operate in the trial.
4. The applicant will appear regularly on each and every date fixed by the trial court, unless his personal appearance is exempted through counsel by the court concerned.

In the event of breach of any of the aforesaid conditions, the court below will be at liberty to proceed to cancel his bail.

Before parting this file, it is being specified that it is very strange to see the situation of investigation and the substitution of a poor labourer in place of moneyed and landed person Vikki and confession, made basis of filing charge-sheet, being under allurements and assurance recorded in confession itself, under Section 164 Cr.P.C.; it's a case of murder of a tiny girl of ten years after ruffing her; investigation is of this situation.

This Court is compelled to mention that Director General of Police and Principle Secretary Home of U.P. to look into the matter as to who is the real culprit? or who is real accused? committed this offence and what should be fate of investigation in view of above arguments advanced by both side and situation present on record.

Learned Senior Registrar of this Court as well as learned AGA in-charge of this Court to transmit this order to above authorities at an earliest for further needed course.

Order Date :- 6.5.2022

Dhirendra