

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11361 of 2023

Applicant :- Roshan

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ram Sakal Yadav, Ram Bachan Yadav, Syed Shahnawaz Shah

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Syed Shahnawaz Shah, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the record.
3. This application for bail has been filed by applicant-Roshan, seeking his enlargement on bail in Case Crime No. 168 of 2022, under Sections 363, 366, 376, 120-B IPC, Sections 3/4 POCSO Act and Section 3(2)5 SC/ST Act, Police Station-Marihan, District-Mirzapur during the pendency of trial.
4. At the very outset, the learned A.G.A. contends that notice of present application for bail has been served upon first informant-opposite party 2 07.03.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose this application for bail.
5. Record shows that in respect of an incident, which is alleged to have occurred on 31.08.2022, a delayed FIR dated 04.09.2022 was lodged by first informant-opposite party 2 Smt. Urmila (mother of the prosecutrix) and was registered as Case Crime No. 168 of 2022, under Section 363 IPC, Police Station-Marihan, District-Mirzapur. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.
6. The gravamen of the allegations made in the FIR is to the effect that daughter of the first informant i.e. the prosecutrix namely- X aged about 17 years went her school i.e. i.e. Shri Brijraj Adarsh Intermediate College, Chaukhada but did not return home. Even though, the hectics search was made to locate her whereabouts but the prosecutrix could not be found.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The prosecutrix was recovered on 18.01.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Copy of the same is on record at page 29 of the paper book. In the aforesaid statement of the prosecutrix, the complicity of Monu, Munni Devi and Roshan emerged in the crime in question. As per the said statement of the prosecutrix, the named accused took the prosecutrix to his native place at Meerut and thereafter the prosecutrix and co-accused Monu live together for a period of 1 month as husband and wife. Subsequently, the marriage of the prosecutrix was solemnized with applicant Roshan. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C. The Doctor, who examined the prosecutrix, however, did not find any injury on her person so as to denote commission of deliberate or sexual assault. With regard to the private part of the prosecutrix, the Doctor has opined as follows;-

"Hymen - Ruptured old healed torn."

8. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the results of the same are in negative. However, the copy of the Supplementary Medico Legal Report of the prosecutrix has not been brought on record. As per the medical opinion, the prosecutrix is said to be aged about 18 to 20 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Copy of the same is on record at page 48 of the paper book. The prosecutrix in her aforesaid statement has implicated both the accused in the crime in question for having deliberately dislodged her modesty.

9. During course of investigation, Investigating Officer recovered the High School mark sheet of the prosecutrix wherein her date of birth is recorded as 12.06.2005. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 31.08.2022. As such, the prosecutrix was aged about 17 years and 4 months. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. who have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant-Roshan and Monu Pal is established in the crime in question. He, accordingly, submitted the charge sheet dated

16.03.2023 whereby applicant-Roshan and Monu Pal have been charge sheeted under Sections 363, 366, 376, 120-B IPC, Sections 3/4 POCSO Act and Section 3(2)(V) SC/ST Act.

10. At the very outset, the learned counsel for applicants contends that co-accused Monu Pal has already been enlarged on bail by this Court vide order dated 19.10.2023 passed in Criminal Misc. Bail Application No. 11880 of 2023 (Monu Pal Vs. State of U.P. and 3 Others). For ready reference, the same is reproduced hereinunder:-

"1. Heard Sri Ram Bachan Yadav, learned counsel for the applicant and learned A.G.A for the State.

2. There is allegation against the applicant of abduction of minor girl with intent to marry, commission of offences of rape, conspiracy and penetrative sexual assault. The victim belongs to schedule caste.

3. Counsel for the applicant submits that the applicant has been falsely implicated in this case. The victim is related to the applicant. It is a case of false implication. The applicant is in jail since 22.01.2023 and has no criminal history to his credit. He has pointed out to the statement of the victim recorded under Section 164 Cr.P.C., wherefrom it is clear that applicant is the son-in-law of bua of the victim. He is a married man and illegally abducted the victim and taken her to Meerut and and raped her then married her to co-accused, Roshan. She alleges that she lived with the applicant as his wife for one month and thereafter she was got married to co-accused, Roshan. In the statement of the victim before the doctor also she has made similar allegation against the applicant. The victim claimed her age as 17 years. As per radiological examination report, she is aged about 18 to 20 years.

5. Learned counsel for the applicant also submits that the applicant has been falsely implicated in this case. The victim had consenting relationship with co-accused, Roshan, and she married him against against the wife of applicant. Hence the applicant has been falsely implicated in this case by victim.

6. Learned A.G.A has opposed the bail application of the applicant.

7. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

8. Let the applicant, Monu Pal, involved in Case Crime No. 168 of 2022, under Section- 363 IPC, Police Station- Marihan, District- Mirzapur, 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) 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.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) 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.

(v) 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.

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

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

Order Date :- 19.10.2023"

11. On the above premise, the learned counsel for applicant contends that though the case of present applicant is on better footing that co-accused Monu Pal inasmuch as, as per the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. she has already solemnized marriage with the applicant. Therefore, he submits that criminality, if any, committed by the applicant stands washed out. He, therefore, submits that applicant is liable to be enlarged on bail.

12. Even otherwise, applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 22.01.2023. As such, he has undergone more than 9 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case, the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

13. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since on the date of marriage, the prosecutrix is below 18 years of age, therefore, her consent, if any, is immaterial. As such, no indulgence be granted by this Court in favour of applicant. The prosecutrix is a young girl, who was aged about 17 years and 4 months on the date of occurrence. As such, no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

14. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that co-accused Monu Pal has already been enlarged on bail, the prosecutrix in her aforesaid statements under Sections 161/164 Cr.P.C. has clearly and categorically stated that she has solemnized marriage with the applicant, as such, criminality, if any, committed by the applicant stands washed out, though the prosecutrix was below 18 years of age on the date of her marriage with the applicant yet the marriage of the prosecutrix with the applicant shall not be void on that ground but shall be voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11(2) of the Hindu Marriage Act, up to this stage, there is nothing on record to show that the prosecutrix has initiated proceedings for declaration of her marriage as void, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record

necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

15. Accordingly, the bail application is **allowed**.

16. Let the **applicant-Roshan**, be released on bail in the aforesaid case crime number 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 which are being imposed in the interest of justice:-

(i) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) 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 THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

17. However, it is made clear that any wilful violation of above

conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 27.10.2023

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