

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34132 of 2023

Applicant :- Rahul

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

Counsel for Applicant :- Kamal Kumar Singh

Counsel for Opposite Party :- G.A.,Alok Mishra

Hon'ble Rajeev Misra,J.

1. Heard Mr. Kamal Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Alok Mishra, who has put in appearance on behalf of first informant-opposite party 2. Though cause list has been revised, neither Mr. Alok Kumar Mishra nor any one on his behalf is present to oppose this application for bail.

2. Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record

3. Perused the record.

4. This application for bail has been filed by applicant-Rahul, seeking his enlargement on bail in Case Crime No. 84 of 2023, under Section 376-AB IPC and Sections 5/6 POCSO Act, Police Station-Chiraiyakot, District-Mau during the pendency of trial.

5. Record shows that in respect of an incident, which is alleged to have occurred on 11.06.2023, a prompt FIR dated 11.06.2023 was lodged by first informant-Ram Belas (father of the prosecutrix) and was registered as Case Crime No. 84 of 2023, under Section 376 IPC and Sections 3/4 POCSO Act, Police Station-Chiraiyakot, District-Mau. In the aforesaid FIR, applicant-Rahul has been nominated as solitary named accused.

6. Learned counsel for applicant submits that upon completion of statutory investigation of aforementioned Case Crime Number, Investigating Officer, ultimately, submitted the charge sheet dated 30.06.2023 whereby applicant was charge sheeted under Section 376-AB IPC and Sections 5/6 POCSO Act.

7. Subsequent to above, cognizance was taken upon same by court

concerned. As a result, the trial procedure commenced. The first informant has deposed before court below as PW-1 whereas the prosecutrix has deposed before court below as PW-2.

8. According to the learned counsel for applicant, the prosecutrix in her deposition before court below has not supported the FIR. He, therefore, contends that once the prosecutrix has herself not supported the FIR, no useful purpose shall be served in prolonging the custodial arrest of applicant during the pendency of trial. He further submits that since the statement of the prosecutrix and that of first informant have already been recorded before court below, therefore, there is no chance of the applicant either tampering with the evidence or terrorizing the crucial witnesses. He, therefore, contends that applicant is liable to be enlarged on bail.

9. 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 13.06.2023. As such, he has undergone more than 5 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 the 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.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. 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 the prosecutrix in her deposition before court below has not supported the FIR, therefore, in view of above and considering 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 upon by the prosecution against applicant stands crystallized, once the prosecutrix has herself not supported the FIR, this Court finds that no useful purpose shall be served in prolonging the custodial arrest of applicant during the pendency of trial, since the statement of the prosecutrix and that of first

informant have already been recorded before court below, there is no chance of the applicant either tampering with the evidence or terrorizing the crucial witnesses, 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.

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

13. Let the **applicant-Rahul**, 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.

14. 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 :- 16.11.2023

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