

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35213 of 2023

Applicant :- Mangal Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Pandey, Vivek Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Ashish Pandey, the learned counsel for applicant and the learned A.G.A. for State

2. Perused the record.

3. Instant bail application has been filed by applicant-Mangal Pandey seeking his enlargement on bail in Case Crime No. 163 of 2023 under Sections 363, 366A, 376DA, 323, 506 I.P.C. and 5g/6 POCSO Act, Police Station-Haldi, District-Ballia, during the pendency of trial.

4. Office has submitted a report dated 13.10.2023 stating therein that notice of present application for bail has been served upon upon first informant opposite party-2. 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 25.08.2022, a delayed F.I.R. dated 28.08.2023 was lodged by first informant Mannu Sharma (father of the prosecutrix) and was registered as Case Crime No. 163 of 2023 under Sections 363, 366, 506 I.P.C. Police Station-Haldi, District-Ballia. In the aforesaid F. I.R., one Guddu Pandey (applicant

herein) has been nominated as solitary named accused.

6. The gravamen of the allegations made in the F.I.R is to the effect that on 25.08.2022 at around 11.00 AM. named accused Guddu Panday enticed away the minor grand daughter of first informant namely X, aged about 14 years.

7. After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. After completing necessary formalities, the Investigating Officer submitted the charge sheet whereby applicant has been charge sheeted under Sections 363, 366A, 376DA, 323, 506 I.P.C. and 5g/6 POCSO Act. After submission of aforementioned charge sheet, cognizance was taken upon same by court concerned. Resultantly, the trial procedure commenced. Resultantly trial came to be registered as Sessions Trial No. 310 of 2023 (State Vs. Guddu Pandey and others) under Sections, 363, 366a, 376D A, 323, 506 I.P.C. and 5g/6 POCSO Act, Police Station-Haldi, District-Ballia.

8. Learned counsel for applicant submits that though applicant is named as well as charge-cheeted accused yet he is liable to be enlarged on bail. Prosecutrix in her deposition before court below has not supported the F.I.R. As such no useful purpose shall be served in prolonging the custodial arrest of applicant during the pendency of trial.

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 custody since 01.12.2022. As such, he has undergone more than one year and nine months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore

the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. Upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, the learned counsel for applicants thus submits that applicants are liable to be enlarged on bail. In case applicants are enlarged on bail, they 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, 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.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant, coupled with the fact that the prosecutrix in her deposition before court below has not supported the F.I.R., as such no useful purpose shall be served in prolonging the custodial arrest of applicant, the period of incarceration, clean antecedents of applicant, police report (charge-sheet) 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 applicants stands crystallised, 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, the judgement of the Supreme Court in **Sumit Subhash Chandra Gangawal and another Vs. State**¹¹³ of Maharashtra and another 2023 Live Law SC 373 therefore irrespective of the objections raised by the learned A.G.A. in opposition to present

application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

11. Accordingly, present application for bail is **allowed**.

12. Let the applicant-**Mangal Pandey** involved in aforesaid case crime number 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 which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

13. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 16.10.2023

YK