

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37496 of 2023

Applicant :- Kamal Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Shailendra Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Shailendra Kumar Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Kamal Kumar seeking his enlargement on bail in Case Crime No.05 of 2023, under Sections 147, 149, 323, 328, 376 IPC, police station Jahanabad, district Pilibhit, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 01.01.2023, a delayed first information report dated 02.01.2023 was lodged by the first informant, namely, Smt. Guddi Devi (mother of the prosecutrix) and was registered as Case Crime No.0005 of 2023, under Sections 147, 149, 323, 328, 376 IPC, police station Jahanabad, district Pilibhit. In the aforesaid F.I.R., the applicant Kamal Kumar along with five others, namely, Sanju; Satyapal; Sheetal; Kalawati and Maya Devi have been nominated as named accused.

Learned counsel for the applicant contends that the statement of the prosecutrix has been recorded before the court below on 09.10.2023. The prosecutrix in her statement has clearly and categorically stated that she was in love with the present applicant till her marriage was refused by her father. Admittedly, refusal of marriage of the prosecutrix with the applicant was accorded on 09.10.2023, whereas the occurrence giving rise to the present criminal proceedings occurred much before i.e. 01.01.2023. In view of above, the prosecutrix was in relationship with the applicant. Consequently, the prosecutrix shall be deemed to be a consenting party. Moreover, the prosecutrix is major.

Even otherwise, applicant is a man of clean antecedents, inasmuch as, he has no criminal history to his credit except the present one. The applicant is in jail since 05.01.2023. As such, he has undergone more than nine months of

incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. To buttress his submission, he has placed reliance upon the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**. It is thus contended by the learned counsel for applicant 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this court. The prosecutrix is a young girl aged about 20 years whose modestly has been dislodged by the applicant. As such, no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, complicity of the accused, nature and gravity of offence, accusation made and coupled with the fact that the prosecutrix was in love as also in relationship with the applicant, the father of the prosecutrix accorded his refusal to the marriage of the prosecutrix with the applicant on 09.10.2023, the occurrence giving rise to the present criminal proceeding occurred on 01.01.2023 therefore on the date of occurrence the prosecutrix was a willing and consenting party, the clean antecedents of the applicant, the period of incarceration undergone, in spite of the fact that the police report under Section 173 (2) CrPC i.e. charge-sheet having been submitted, therefore the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet the learned A.G.A. could not point out from the record any such circumstance necessitating the custodial arrest of the applicant during the course of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal (supra)**, 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, the applicant has made out a case for bail.

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

Let the applicant **Kamal Kumar**, involved in aforesaid case crime number, be released on bail on his furnishing a personal

bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) 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., 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, in accordance with law, under section 174-A I.P.C.

(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 him 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.

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 :- 13.10.2023.

Rks.