

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38878 of 2023

Applicant :- Laltesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Punya Sheel Pandey, Pankaj Kumar Shukla

Counsel for Opposite Party :- G.A., Vinay Kumar Tripathi

Hon'ble Rajeev Misra, J.

Heard Mr. Pankaj Kumar Shukla along with Mr. Punya Sheel Pandey, the learned counsel for applicant, the learned A.G.A. for State and Mr. V.K. Tripathi, the learned counsel representing first informant.

This bail application has been filed by the applicant Laltesh seeking his enlargement on bail in Complaint Case No. 480 of 2020, under Sections 376, 384, 120B, 506 IPC, P.S. Kotwali, District Mathura during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 05.06.2016, a delayed F.I.R. dated 06.10.2016 came to be lodged by first informant Smt. Ninesh (prosecutrix) and was registered as Case Crime No. 0946 of 2016, under Sections 384, 376, 511, 506, 120B IPC, P.S. Kotwali, District Mathura. In the aforesaid F.I.R., 4 persons namely Manoj, Laltesh, Madan alias Bhopalla and mother of Manoj have been nominated as named accused.

It is apposite to mention here that the said F.I.R. came to be lodged subsequent to an order passed by concerned Magistrate on an application under Section 156 (3) Cr. P. C. filed by first informant/prosecutrix.

Mr. Pankaj Shukla, the learned counsel for applicant submits that after aforementioned F.I.R. was lodged, the statement of the prosecutrix was recorded under Section 161 Cr. P. C. Same is on record at page 20A of the paper book. The prosecutrix in her aforesaid statement has not supported the F.I.R. On the basis of above and other material collected by the Investigating Officer particularly the fact that the prosecutrix was in live-in-relationship

with the applicant, he submitted the final report. However, the same was disapproved by the Circle Officer as the statement of the prosecutrix was not recorded under Section 164 Cr. P. C. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr. P. C., wherein the prosecutrix has departed from her previous statement under Section 161 Cr. P. C. However, on the basis of above as well as other material collected by the Investigating Officer, he came to the conclusion that complicity of applicant is not established in the crime in question. He, accordingly, submitted (final report) dated 26.10.2016. Against the aforesaid the police report (final report) in terms of Section 173 (2) Cr. P. C. a protest petition was filed by the prosecutrix. Same was allowed and the protest petition filed by the first informant/prosecutrix was directed to be treated as a complaint.

Accordingly, Court below examined the prosecutrix (complainant) and his witnesses under Section 200/202 Cr. P. C. Ultimately, Court below passed the summoning order dated 21.10.2022.

Learned counsel for applicant submits that in view of the recital contained in the statement of the prosecutrix recorded under Section 161 Cr. P. C., no criminality can be said to have been committed by the applicant. Parties were in live in relationship. The prosecutrix has made departure from her said statement under Section 164 Cr. P. C. However, the departure so made remains unexplained. The prosecutrix in her statement under Section 200 Cr. P. C. has reiterated her previous statement under Section 164 Cr. P. C. without explaining the departure so occurring therein from her previous statement under Section 161 Cr. P. C. Placing reliance upon the judgment of the Kerala High Court in the case of **Kader S/O Moidunni vs. State of Kerala reported in 1999 Law Suit (KER) 140**, he thus submits that the material collected by the Investigating Officer during the course of investigation is also a relevant material to be considered while exercising jurisdiction under Section 190 (1) (b) Cr. P. C. Furthermore, in view of the clinching statement of the prosecutrix under Section 161 Cr. P. C., no prosecution of the applicant can be maintained. The prosecutrix is otherwise major. She is a willing and consenting party.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 26.06.2023. As such, he has undergone more than 4 months of incarceration. He, therefore, submits that the 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. and the learned counsel representing first informant have opposed the prayer for bail. They submit that prosecutrix is now a complainant. In her statement under Section 200 Cr. P. C., she has fully supported the complaint, as such, no indulgence be granted in favour of applicant. However, they 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the prosecutrix in her statement under Section 161 Cr. P. C has clearly stated that she was in live in relationship with the applicant, the prosecutrix is major, prima facie she is a willing and consenting party, the prosecutrix has departed from her previous statement under Section Section 161 Cr. P. C. in her subsequent statement under Section 164 Cr. P. C., however, the departure so made in the subsequent statement remains unexplained, ultimately, the statement of the prosecutrix was recorded under Section 200 Cr. P. C., wherein she has rejoined her previous statement under Section 161 Cr. P. C., but the contradiction as noted above again remains unexplained even in the subsequent statement under Section 200 Cr. P. C., by virtue of the law laid down by Kerala High Court in the case of **Kader S/O Moidunni vs. State of Kerala, (supra)** the material collected by the Investigating Officer during the course of investigation is also a relevant material at the time of taking cognizance under Section 190 (1) (b) Cr. P. C., the clean antecedents of applicant, the period of incarceration undergone, the learned A.G.A. and the learned counsel representing first informant could not point out any circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned counsel for first informant and 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 **Laltesh** 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 :- 7.11.2023

HSM