

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38845 of 2023

Applicant :- Pavan Gond

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

Counsel for Applicant :- Raghvendra Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Raghvendra Prakash, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Pavan Gond seeking his enlargement on bail in Case Crime No. 274 of 2022, under section 376-D, 354, 504, 506, IPC, Section 5-J(2)/6 POCSO Act, and Section 3(1)r, 3 (1)s, 3(2)5, 3(a)(w)(1) SC/ST Act, Police Station- Raunapar, District Azamgarh, during the pendency of trial.

At the very outset, the learned A.G.A. submits that notice of present application for bail has been served upon first informant/opposite party-4 on 19.8.2023. However, inspite of service of notice, no one has put in appearance on behalf of opposite party-4 to oppose this application for bail.

Record shows that an F.I.R. dated 7.8.2022 was lodged by first informant Renu Devi and was registered as Case Crime No. 274 of 2022, under section 376-D, 354, 504, 506, IPC, Section 5-J(2)/6 POCSO Act, and Section 3(1)r, 3 (1)s, 3(2)5, 3(a)(w)(1) SC/ST Act, Police Station- Raunapar, District Azamgarh. In the aforesaid F.I.R. four persons namely, Pavan Gaur, Manoj Gaur, Sunil Gaur and Udham Singh have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused used to molest the prosecutrix i.e. Nand of the first informant aged about 16 years. The F.I.R. further records that the modesty of the prosecutrix was dislodged by Manoj and Sushil on account of which the prosecutrix came in family way.

After completion of statutory investigation of aforesaid case crime number, Investigating Officer, ultimately submitted the charge-sheet dated 5.10.2022, whereby Pavan Gond, and Uddham Singh have been charge sheeted under sections 376-D, 354, 504, 506, IPC, Section 5-J(2)/6 POCSO Act, and Section 3(1)r, 3 (1)s, 3(2)5, 3(a)(w)(1) SC/ST Act.

After aforementioned charge sheet was submitted, cogizance was taken by Court concerned.

As a result, the trial procedure commenced. Charges were framed. Thereafter the statement of first informant namely, P.W.1 was recorded followed by statement of prosecutrix i.e. P.W.2. The prosecutrix i.e. P.W.2 in her examination in chief before Court below has clearly exculpated present applicant and Uddham Singh in the crime in question. On the above premise, learned counsel for applicant submits that once the prosecutrix in her examination in chief has not made any allegation against charge sheeted accused that they have deliberately and forcibly dislodged her modesty, therefore no good ground exists to prolonging custodial arrest of applicant

Even otherwise, applicant is man of clean antecedent inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 10.8.2022. As such, he has undergone more than five months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant. As such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. 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.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the prosecutrix in her

examination-in-chief before the Court below has not supported the f.I.R., the prosecutrix has further clearly exculpated the present applicant and co-accused in the crime in question, the clean antecedents of applicants, the period of incarceration undergone, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, yet inspite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicants 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 comment on the merits of the case, applicant has made out a case for bail.

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

Let the applicant **Pavan Gond**, be released on bail in the aforesaid case crime number on 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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

Arshad