

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39144 of 2023

Applicant :- Arif

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

Counsel for Applicant :- Laxmi Narayan Rathour

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39212 of 2023

Applicant :- Sagar @ Nafees

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

Counsel for Applicant :- Firoz Haider

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Laxmi Narayan Rathour, the learned counsel for applicant-Arif, Mr. Firoz Haider, the learned counsel for applicant-Sagar @ Nafees and the learned A.G.A. for State.

2. Affidavit of compliance filed by the learned Brief Holder in Criminal Misc. Bail Application No. 39212 of 2023 (Sagar @ Nafees Vs. State of U.P. and 3 Others) in Court today, is taken on record.

3. Perused the record.

4. These applications for bail have been filed by applicants-Arif and Sagar @ Nafees seeking their enlargement on bail in Case Crime No. 54 of 2023, under Sections 363, 366, 376(3) IPC, Section 3(2)(5) SC/ST Act and Section 5J(2)/6 POCSO Act, Police Station-Gohan, District-Jalaun during the pendency of trial.

5. At the very outset, the learned A.G.A. contends that notice of present applications for bail has been served upon first informant-opposite party 2 on 30.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose these applications for bail.

6. Record shows that in respect of an incident, which is alleged to have occurred on 21.05.2023, a delayed FIR dated 25.05.2023 was lodged by first informant-Vinod Kumar (father of the prosecutrix) and was registered as Case Crime No. 54 of 2023, under Sections 363, 366 IPC, Police Station-Gohan, District-Jalaun. In the aforesaid FIR, applicant-Arif has been nominated as solitary named accused.

7. The gravamen of the allegations made in the FIR is to the effect that named accused-Arif enticed away the minor daughter of the first informant i.e. the prosecutrix namely - X.

8. Learned counsel for applicant contends that though applicants are named/charge sheeted accused yet they are liable to be enlarged on bail. The charge sheet has been submitted against applicants on 18.07.2023 whereby applicant-Arif has been charge sheeted under Sections 363, 366, 376(3) IPC, Section 3(2)(5) SC/ST Act and Section 5J(2)/6 POCSO Act whereas applicant-Sagar @ Nafees has been charge sheeted under Sections 363, 366 IPC, Section 3(2)(5) SC/ST Act and Sections 16/17 POCSO Act.

9. Attention of the Court was then invited to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C., which are on record at pages 17 and 36 of the paper book pertaining to applicant-Arif. With reference to above, the learned counsel for applicants submits that the prosecutrix in her aforesaid statements has clearly and categorically stated that she has solemnized marriage (Nikah) with the applicant-Arif. The date of birth of the prosecutrix recorded in the School records of the institution first attended by her is 05.11.2007. As such, the prosecutrix was aged about 15 years, 6 months and 16 days on the date of occurrence. In the submission of the learned counsel for applicant, the prosecutrix was of marriagable age as per the personal law applicable to the parties. On the above premise, it is thus urged that since the prosecutrix has solemnized marriage with the applicant-Arif, therefore, criminality, if any, committed by the applicant shall stand washed out. The case of co-accused Sagar-Nafees is clearly distinguishable inasmuch as, the applicant-Sagar @ Nafees has been charge sheeted only under Sections 363, 366 IPC, Section 3(2)(5) SC/ST Act and Section 5J(2)/6 POCSO Act. As such, the role of the applicant Sagar @ Nafees is that of an abettor.

10. Even otherwise, applicants are men of clean antecedents inasmuch as, they have no criminal history to their credit except the present one. Applicant-Arif is in jail since 23.06.2023 and applicant-Sagar @ Nafees is in jail since 21.06.2023. As such, they

have undergone substantial period 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 applicants stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicants during the pendency of trial. On the above premise, they submit that applicants are liable to be enlarged on bail. In case, the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

11. Per contra, the learned Brief Holder for State has opposed the prayer for bail. She submits that since applicants are named/charge sheeted accused, therefore, they do not deserve any indulgence by this Court. However, the learned Brief Holder could not dislodge the factual and legal submissions urged by the learned counsel for applicants with reference to the record at this stage.

12. Having heard, the learned counsel for applicants, the learned Brief Holder 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 statements under Sections 161/164 Cr.P.C. has clearly and categorically stated that she has solemnized marriage with the applicant-Arif, therefore, criminality, if any, committed by the named accused stands washed out, the role of the co-accused Sagar @ Nafees is clearly distinguishable inasmuch as, he is an abettor of the crime in question, the clean antecedents of applicants, 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 relied upon by the prosecution against applicant stands crystallized, 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, applicants have made out a case for bail.

13. Accordingly, the bail applications are **allowed**.

14. Let the **applicants-Arif and Sagar @ Nafees**, be released on bail in the aforesaid case crime number on their 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.

15. However, it is made clear that any wilful violation of above conditions by the applicants, shall have serious repercussion on their 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 :- 17.10.2023

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