

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39732 of 2023

Applicant :- Mohd. Alim

Opposite Party :- State of U.P.

Counsel for Applicant :- Raj Kamal Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Raj Kamal Tripathi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Mohd. Alim, seeking his enlargement on bail in Case Crime No. 0173 of 2023, under Sections 376(2)n, 313, 323, 504, 506 IPC, Police Station-Deorania, District-Bareilly during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 11.05.2023, a delayed FIR dated 29.05.2023 was lodged by first informant i.e. the prosecutrix Dhan Devi and was registered as Case Crime No. 0173 of 2023, under Sections 376, 313, 323, 504, 506 IPC, Police Station-Deorania, District-Bareilly. In the aforesaid FIR, 6 persons namely - (1) Mohd. Alim (applicant herein), (2) Sabir, (3) Wazid, (4) Nazim, (5) Shifa (sister of the applicant) and (6) Mother of the applicant have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that applicant-Mohd. Alim by playing fraud and deceit and claiming himself to be a Hindu whereas he is a Muslim by religion, solemnized marriage with the prosecutrix by placing vermilion on forehead of the prosecutrix. On the basis of the said marriage, the applicant is alleged to have been repeatedly and continuously dislodged the modesty of the prosecutrix by maintaining physical relations with her. Upon discovery of the real fact, the FIR giving rise to the present application for bail was lodged.

6. After above-mentioned FIR was lodged, Investigating Officer

proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The statements of the prosecutrix were recorded under Sections 161 and 164 Cr.P.C. wherein the prosecutrix has supported the FIR. The prosecutrix was also requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has supported the FIR. However, since the internal medical examination of the prosecutrix was conducted after expiry of a period of almost 1 month from the date of occurrence, therefore, nothing adverse was found on the body of the prosecutrix.

7. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only one of the named accused i.e. Mohd. Alim (applicant herein) is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 11.07.2023 whereby applicant -Mohd. Alim has been charge sheeted under Sections 376(2)n, 313, 323, 504, 506 IPC.

8. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Inviting the attention of the Court to the FIR, he submits that it is the admitted case of the prosecutrix that the occurrence giving rise to the present criminal proceedings is alleged to have occurred in between 17.03.2023 to 04.05.2023 but the FIR was lodged on 29.05.2023. As such, the FIR is highly belated. However, neither in the FIR nor in the statement of the prosecutrix, any explanation has been offered for explaining the delay in lodging the FIR.

9. Attention of the Court was further invited to the medico legal examination report of the prosecutrix and on basis thereof, he submits that the Doctor, who medically examined the prosecutrix has clearly opined that the prosecutrix never came in family way as is established from the document occurring at page 47 of the paper book, which is the USG report of the prosecutrix. Resultantly, in the charge sheet submitted against applicant on 11.07.2023, the applicant has been exculpated of the charge under Section 313 IPC. He, therefore, submits that in view of above, the allegations made in the FIR that on account of the act of the applicant, the prosecutrix came in family way is totally false. This false element occurring in the FIR vitiates the entire FIR and therefore, same is liable to be disbelieved. Even otherwise, the prosecutrix is major. She is a willing and consenting party. As such, no offence as complained as can be said to have been

committed by the applicant.

10. 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 jail since 31.05.2023. As such, he has undergone more than 4 and 1/2 months 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 applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he submits 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.

11. 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. Applicant is a muslim by religion yet he solemnized marriage with the prosecutrix in accordance with Hindu Rites and Customs, therefore, the alleged marriage of the applicant with the prosecutrix is void. The aforesaid act of the applicant clearly establishes the fraud and deceit played by the applicant. It is well settled that a party which commits a fraud cannot be allowed to reap the benefits of fraud, as fraud defeats equity. On the above premise, he, therefore, submits that no sympathy be shown by this Court in favour of applicant.

12. When confronted with above, the learned counsel for applicant could not overcome the same.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 17.10.2023/Vinay