

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40349 of 2023

Applicant :- Vikas Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- Rahul Saxena

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rahul Saxena, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Vikas Kumar, seeking his enlargement on bail in Case Crime No. 72 of 2023, under Sections 376, 506 IPC and Sections 3/4 Dowry Prohibition Act, Police Station-Jahanabad, District-Pilibhit during the pendency of trial.

4. The first bail application of applicant was rejected by this Court vide order dated 10.07.2023 passed in Criminal Misc. Bail Application No. 25780 of 2023 (Vikas Kumar Vs. State of U.P.). For ready reference, the above order dated 10.07.2023 is reproduced hereinunder:-

"Heard Mr. Ashish Mishra, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Vikas Kumar seeking his enlargement on bail in Case Crime No. 72 of 2023, under Sections 376, 506 IPC and 3/4 D.P. Act, Police Station- Jahanabad, District Pilibhit during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 4.3.2023, a delayed F.I.R. dated 4.3.2023 was lodged by first informant Rajkumari @ Soni and was registered as Case Crime No. 72 of 2023, under Sections 376, 506 IPC and 3/4 D.P. Act, Police Station- Jahanabad, District Pilibhit. In the aforesaid F.I.R. three persons namely, Vikas, Jamuna, Shibbu

Dayal, have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that marriage of applicant was settled with the prosecutrix, and taking advantage of same, applicant made physical relation with prosecutrix, who is alleged to have come in family way and the age of the fetus is said to be three months.

Varied submissions have been made by the learned counsel for applicant regarding innocence of the applicant. He, further submits that applicant has already got his DNA test conducted but the prosecutrix has refused the same. The police report in terms of Section 173(2) Cr.P.C. i.e. charge sheet has already been submitted. As such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, up to this stage, there is no such incriminating circumstance necessitating the custodial arrest of applicant during the course of trial. 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 16.1.2023. As such he has undergone more than 3 and 1/2 months of incarceration. He, therefore contends 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 trial.

Per contra, the learned A.G.A has opposed the present application 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. Offence complained of is not private in nature but a crime against society. Prosecutrix has leveled specific allegations against applicant. On account of act of applicant, prosecutrix has come in family way. The age of the fetus is three months, as per the medical report, which is on record at page 14 of the case diary. Upto this stage there is nothing on record to infer the innocence of applicant. He, therefore submits that applicant is not liable to be enlarged on bail.

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

In view of above, present application fails and is liable to be rejected.

It is accordingly rejected"

5. Learned counsel for applicant submits that subsequent to the order dated 10.07.2023, the statement of the prosecutrix was recorded before court below as PW-1. The FIR giving rise to present criminal proceedings was lodged on 04.03.2023 whereas, the marriage of the applicant was already solemnized with another lady on 25.01.2023. With reference to the statement of the prosecutrix as recorded before court below, he submits that the prosecutrix is major. The prosecutrix was in consensual relationship with the applicant as is clearly established from the recital contained at the bottom of page 106 of the paper book i.e. the deposition of the prosecutrix before court below. It is then contended that as per the USG report dated 10.03.2023, the prosecutrix was said to be in family way and the age of the fetus was determined as 3 months old. However, the prosecutrix in her statement before court below on 26.07.2023 has stated that she underwent miscarriage and the fetus got aborted. The date of this occurrence has not been mentioned in the statement of the prosecutrix. Admittedly, a period of more than 3 months must have rolled by from the date of alleged aforesaid occurrence. There is no medical evidence in respect of the same. It is impossible to believe that the prosecutrix underwent abortion at such a late stage and yet there is no medical evidence regarding the same. It is thus urged that prima-facie, the factum with regard to the prosecutrix coming in family way and subsequently, undergoing abortion becomes doubtful.

6. According to the learned counsel for applicant since the statement of the prosecutrix has already been recorded, therefore, there is no question regarding the tampering of evidence or terrorizing the prosecutrix from giving her free statement before court below. On the above premise, he submits that no useful purpose shall be served in prolonging the custodial arrest of applicant during the pendency of trial.

7. 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 16.03.2023. As such, he has undergone more than 7 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.

8. 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. The prosecutrix in her deposition before court below has fully supported the FIR. As such, no new or good ground has been made out to enlarge the applicant on bail.

9. 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 statement of the prosecutrix has already been recorded before court below, therefore, there cannot be any eventuality regarding tampering of witness or terrorizing the prosecutrix from not giving the evidence before court below, initially, the prosecutrix was said to be in family way and as per the USG report dated 10.03.2023, the age of the fetus was said to be about 3 months, however, the prosecutrix in her deposition before court below has stated that she underwent abortion, however, the date of the said occurrence has not been mentioned in the statement of the prosecutrix, there is no medical evidence to show that the prosecutrix was medically treated in view of the aforesaid event, the miscarriage which occurred at an advance stage will necessary involve medical treatment, therefore, prima-facie, the medical evidence regarding the fact that the prosecutrix was in family way is doubtful, the clean antecedents of applicant, 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, applicant has made out a case for bail.

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

11. Let the **applicant-Vikas Kumar**, be released on bail in the aforesaid case crime number on his 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.

12. 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 :- 18.10.2023

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