

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41200 of 2023

Applicant :- Roop

Opposite Party :- State of U.P.

Counsel for Applicant :- Saurabh Kumar, Hemant Sharma

Counsel for Opposite Party :- G.A., Kamendra Tripathi, Shreesh Bahadur Tripathi

Hon'ble Rajeev Misra, J.

Heard Mr. Vinod Sharma, 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-Roop seeking his enlargement on bail in Case Crime No. 169 of 2023, under section 376, 328, 354 and 120 B I.P.C, Police Station- Khanpur, District Bulandshahr, during the pendency of trial.

Record shows that an F.I.R. dated 2.7.2023 was lodged by first informant Shivani and was registered as Case Crime No. 169 of 2023, under section 376, 328, 354 and 120 B I.P.C, Police Station- Khanpur, District Bulandshahr. In the aforesaid F.I.R., applicant has been nominated as solitary named accused.

Gravamen of the allegations made in the F.I.R. is to the effect that first informant/prosecutrix had gone to the house of Babita, wherein son of Babita gave her some stupefying substance. Thereafter the modesty of prosecutrix was dislodged by Roop by forcibly committing rape upon her. As per prosecution story, it is alleged that thereafter the marriage of the prosecutrix was deliberately and forcibly got solemnized with Roop, even though prosecutrix was already married. Subsequently a demand of Rs. 2,00,000/- was raised, failing which the obscene photographs of the prosecutrix as well as the marriage photographs of the prosecutrix was to be made viral.

After aforesaid F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of chapter XII Cr.P.C. Thereafter the statement of

prosecutrix was recorded under section 161 Cr.P.C. Copy of same is on record at page 6 of the supplementary affidavit dated 3.10.2023. The prosecutrix in her aforesaid statement, has supported the F.I.R., inasmuch as the role of dislodging the modesty of the prosecutrix has again been specified to applicant Roop. Thereafter the prosecutrix was medically examined. However, the Doctor who examined the prosecutrix did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. Ultimately, the statement of the prosecutrix was recorded under section 164 Cr.P.C. same is on record at page 9 of aforesaid supplementary affidavit. The prosecutrix in her aforesaid statement has rejoined her previous statement under section 161 Cr.P.C. During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. including Bati Lal, the grand father of applicant, who has also supported the F.I.R. and implicated the applicant in crime in question. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of applicant is established in the crime in question. He, accordingly submitted the charge sheet dated 28.8.2023, whereby applicant has been charge sheeted under sections 376, 328, 354 and 120 B I.P.C.

Learned counsel for applicant submits that though the applicant is a named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. Applicant is innocnet, he has been falsely implicated in the crime in question. Prosecutrix is major. Medical evidence does not support the ocular version of the occurrence. He, therefore, submits that applicant is liable to be enlarged on bail.

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 11.7.2023. As such, he has undergone more than three months of incarceration. The 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. Learned A.G.A. has referred to the judgement of Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74**, an on basis thereof he contends that prosecution of an accused for an offence of rape and sexual assault can be maintained even in the absence of medical evidence and on the solitary statement of the prosecutrix. However, in such a circumstance, the statement of the prosecutrix must be clear categorical and consistent i.e. devoid of ambiguity. When the statements of the prosecutrix referred to above are examined as a whole the same fall in the realm of impeccable evidence. As such, statements of the prosecutrix do not suffer from the vice of contradiction, embellishment and exaggeration. As such, same are of impeccable character. Even otherwise the grand father of applicant has implicated in the crime in question. There is nothing on record to infer false or malicious prosecution of applicant. As such, no sympathy be shown by this Court in favour of applicant.

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

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 objections raised by the learned A.G.A. in opposition to the present application bail could not be dislodged by learned counsel for applicant, therefore irrespective of the varied submissions urged by learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

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

It is accordingly **rejected**.

Order Date :- 28.11.2023

Arshad