

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40767 of 2023

Applicant :- Arif

Opposite Party :- State of U.P.

Counsel for Applicant :- Shams Uz Zaman

Counsel for Opposite Party :- G.A., Rohit Nandan Pandey

Hon'ble Rajeev Misra, J.

1. Heard Mr. Mohd Yasad, Advocate holding brief of Mr. Shams Uz Zaman, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rohit Nandan Pandey, the learned counsel representing first informant.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Arif seeking his enlargement on bail in Case Crime No. 175 of 2023 under Sections 376, 506 I.P.C., Police Station- Jewar, District- Gautam Buddh Nagar, during the pendency of trial.

4. Record shows that an F.I.R. was lodged on 28.06.2023 by first informant/prosecutrix Reshma and was registered as Case Crime No. 175 of 2023 under Sections 376, 377, 506 I.P.C., Police Station- Jewar, District- Gautam Buddh Nagar. In the aforesaid F.I.R. applicant Arif has been nominated as solitary named accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that named accused extended a false promise of marriage to the prosecutrix. On the said false promise of marriage, applicant doslodged the modesty of the prosecutrix repeatedly.

6. After aforementioned 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 the prosecutrix was recorded under Section 161 Cr.P.C. The same is on record at page 26 of the paper book. In the aforesaid statement, the prosecutrix has not alleged any sentence that false promise of marriage was extended by the applicant. Moreover, from perusal of the said statement it appears that prosecutrix is a willing and consenting party inasmuch as she herself accompanied the applicant. Thereafter, the prosecutrix was requested for her internal medical examination. The Doctor who examined the prosecutrix did not find any sign on the body of the prosecutrix so as to denote commission of deliberate or forceful sexual assault. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the results of the same are in negative. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein the prosecutrix has rejoined her earlier statement under Section 161 Cr.P.C. with better details. .

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 named accused Arif is fully established in the crime in question. Accordingly, Investigating Officer submitted the charge-sheet dated 20.07.2023, whereby applicant has been charge-sheeted under Sections 376, 506 I.P.C.

8. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. The prosecutrix is major. She is a willing and consenting party. The allegations made in the F.I.R. that modesty of the prosecutrix was dislodged by extending false promise of marriage is conspicuous by its absence in the statements of the

prosecutrix recorded under Section 161/164 Cr.P.C. He therefore submits that applicant is liable to be enlarged on bail.

9. 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 custody since 29.06.2023. As such he has undergone almost four months of incarceration. Police report (charge-sheet) 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 crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. The medical evidence does not support the charge-sheet. On the above premise, the learned counsel for applicant 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.

10. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicant is a named accused, therefore, he does not deserve any indulgence by this Court. Applicant is guilty of dislodging the modesty of the prosecutrix by extending false promise of marriage. Prosecutrix in her statements under Sections 161/164 has fully supported the F.I.R. On the above premise, they submit that no sympathy be shown by this Court in favour of applicant. However, they could not dislodge the factual and legal submissions urged by learned counsel for applicant with reference to the record at this stage.

11. Having heard the learned counsel for applicant, the learned A.G.A., the learned counsel representing first informant, upon consideration of material on record, evidence, gravity and nature

of offence, accusations made as well as complicity of applicant coupled with the fact that the prosecutrix is major, she is a willing and consenting party, though in the F.I.R., it has been alleged that her modesty was dislodged by the applicant repeatedly by extending false promise of marriage, however no such allegation has occurred in the statements of prosecutrix recorded under Sections 161/164 Cr.P.C, the clean antecedents of applicant, period of incarceration undergone, the police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised, 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. and the learned counsel for first informant in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

12. Accordingly, present application for bail is **allowed**.

13. Let the applicant-**Arif** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

14. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison.

Order Date :- 30.10.2023

YK