

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43714 of 2023

Applicant :- Mahfuzurhman

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Rai

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Learned counsel for applicant is permitted to amend the cause title of the bail application during course of the day.

Heard Mr. Mangla Prasad Rai, the learned Senior Counsel assisted by Mr. Rajesh Rai, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This bail application has been filed by the applicant Mahfuzurhman seeking his enlargement on bail in Case Crime No. 86 of 2023, under Sections 376, 323, 504, 506 IPC, P.S. Dakshin Tola, District Mau during the pendency of trial.

Record shows that an F.I.R. dated 19.7.2023 was lodged by the first informant/prosecutrix Asma Khatoon and was registered as Case Crime No. 86 of 2023, under Sections 376, 323, 504, 506 IPC, P.S. Dakshin Tola, District Mau. In the aforesaid F.I.R., applicant Mahfuzurhman has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that applicant on the promise of marriage developed intimacy with the prosecutrix and on the basis of the said promise, developed physical relation with the prosecutrix. However, applicant is alleged to have resiled from the said promise extended to the prosecutrix.

Learned counsel for applicant submits that though applicant is a named as well as charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant, on 26.7.2023 followed by a supplementary charge sheet, yet he is liable to be enlarged on bail. Prosecutrix is major and she is a willing and consenting party. As per the allegations made in the F.I.R., present case is case of breach of promise and not a case of extending false promise of marriage itself and

thereby dislodging the modesty of the prosecutrix. Reliance in this regard is placed upon the following judgements:-

(1) Pramod Suryabhan Pawar Vs. State of Maharashtra and another, 2019 SCC OnLine SC 1073

(2) Maheshwar Tigga Vs. State of Jharkhand, (2020) 10 SCC 108

(3) Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and another, 2021 SCC OnLine SC 181

(4) (Mandar Deepak Pawar Vs. The State of Maharashtra and another), 2022 LiveLaw (SC) 649

(5) Naim Ahamed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 22.7.2023. As such, he has undergone more than 2 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named/charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the prosecutrix is major and she is a willing and consenting party, as per the allegations made in the F.I.R., present case is a case of breach of promise and not dislodging the modesty of the prosecutrix by extending false promise of marriage, the judgement of the Supreme Court referred to above, 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, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet upto this stage, no such circumstance has emerged from the record necessitating the custodial arrest of the applicant during the pendency of trial, therefore irrespective of the objections raised by the learned A.G.A., but without making any comments on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Mahfuzurhman** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two heavy 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(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 him 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.

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 :- 13.10.2023

HSM