

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41145 of 2023

Applicant :- Sonu Mishra

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Vijay Kumar Pandey, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant-Sonu Mishra seeking his enlargement on bail in Case Crime No.242 of 2021, under Sections 328, 366, 376, 504, 342, 506, 120-B IPC, police station Sikrara, district Jaunpur, during the pendency of trial.

Perused the record.

Record shows that in respect of an incident which is alleged to have occurred on 22.07.2018, a delayed first information report dated 11.10.2021 was lodged by first informant, namely, Radheyshyam Singh (father of the prosecutrix) and was registered as Case Crime No.0242 of 2021, under Sections 363, 364, 376, 504, 506, 120-B IPC, police station Sikrara, district Jaunpur. In the aforesaid F.I.R., four persons, namely, Sonu Mishra (applicant herein); Sanjay Mishra; Pradhan Vishwakarma and Sunil have been nominated as named accused.

It is apposite to mention here that the aforementioned first information report came to be registered pursuant to the order passed by the concerned Magistrate on an application under Section 156 (3) CrPC filed by the complainant-first informant on 01.09.2021.

Learned counsel for the applicant contends that though applicant is a named and charge-sheeted accused, inasmuch as, charge-sheet has been submitted against applicant and co-accused Sunil Kumar Dubey on 01.10.2023 and another co-accused Sanjay Mishra on 20.08.2022, yet the applicant is liable to be enlarged on bail. He, however, submits that investigation in respect of another named accused Pradhan Vishwakarma is still pending.

Inviting the attention of Court to the FIR, the learned counsel for applicant contends that the occurrence giving rise to the

present criminal proceeding is alleged to have occurred on 22.07.2018, whereas an application under Section 156 (3) CrPC was filed on 01.09.2021. As such, there is huge delay of almost three years in filing the application under Section 156 (3) CrPC. However, no explanation has been offered by the first informant regarding the delay in lodging of FIR either in the application under Section 156 (3) CrPC nor in the statement of the first informant recorded under Section 161 CrPC. Referring to the judgement of the Apex Court in **P. Rajagopal Vs. The State of Tamil Nadu AIR 2019 SC 2866 (paragraph 8)**, the learned counsel for applicant contends that since the delay in lodging the FIR has not been explained, the prosecution of the applicant itself cannot be maintained. It is next contended that one of the charging sections mentioned in the FIR is Section 376 IPC. Though the occurrence is alleged to have occurred on 22.07.2018 but no action was taken in respect of the same. He, therefore, contends that the present criminal proceeding cannot be sustained. To buttress his submissions, he has relied upon the judgement of the Apex Court in **Mandar Deepak Pawar Vs. The State of Maharashtra and Another 2022 LiveLaw (SC) 649**.

Learned counsel for the applicant then contends that co-accused Sanjay Mishra has already been enlarged on bail by this Court vide order dated 08.12.2022 passed in Criminal Misc. Bail Application No.44267 of 2022 (Sanjay Mishra Vs. State of U.P.). For ready reference, the order dated 08.12.2022 is reproduced herein-under :-

"1. Heard Sri Brijesh Kumar Sharma, the learned counsel for the applicant, Sri Shashi Shekhar Tiwari, the learned Additional Government Advocate and perused the record.

2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 242 of 2022, under Sections 366, 328, 342, 120-B IPC, Police Station Sikara, District Jaunpur during pendency of the trial in the Court below.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 11.10.2022 against four named accused persons, including the applicant, alleging that on 22.07.2018, the applicant and co-accused Sonu Mishra took her away with them on the pretext that they would drop at her father's house; that they took her to Mumbai to the house of another co-accused Pradhan Vishwakarma and sold the informant's daughter to the aforesaid co-accused person. It is alleged in the F.I.R. that the applicant and the co-accused persons Sonu Mishra, Sanjay Mishra and Pradhan Vishwakarma raped the informant's daughter. The informant's daughter has not made this allegation against the applicant in her statement recorded during investigation. The F.I.R. further states that after one year, the applicant and co-accused Sonu Mishra took the informant's daughter to another co-accused Sunil and that when the informant's daughter returned to the informant's house, the F.I.R. was lodged on 11.10.2021.

4. In the affidavit filed in support of the bail application, it has been stated that the applicant is innocent and he has been falsely implicated in the present

case and that he has no criminal history.

5. The applicant is languishing in jail since 19.08.2022.

6. Per contra, the learned Additional Government Advocate has opposed the prayer for grant of bail.

7. Having considered the aforesaid facts and circumstances and keeping in view the fact that the incident is alleged to have committed since 22.07.2018 till filing of the complaint on 01.09.2021 and the informant's daughter had not filed any complaint or lodged report during this entire period; although the F.I.R. contains rape allegations against the applicant but the informant's daughter has not levelled any such allegations against the applicant; that there are some other discrepancies levelled in the F.I.R. and in the statement of the informant's daughter, coupled with the fact that the applicant has no criminal history, I am of the view that the applicant is entitled to be released on bail.

8. In light of the preceding discussion and without making any observation on the merits of the case, the instant bail application is allowed.

9. Let the applicant Sanjay Mishra be released on bail in Case Crime No. 242 of 2022, under Sections 366, 328, 342, 120-B IPC, Police Station Sikara, District Jaunpur on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below, subject to the following conditions:-

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

10. In case of breach of any of the above condition, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the bail."

He further contends that another co-accused Sunil Kumar Dubey has also been enlarged on bail by this Court vide order dated 05.10.2023 passed in Criminal Misc. Bail Application No.41654 of 2023 (Sunil Kumar Dubey Vs. State of U.P.). For ready reference, the order dated 05.10.2023 is reproduced herein-under :-

"1. Heard Sri Vijay Kumar Pandey, learned counsel for the applicant and Sri Manoj Kumar Singh, learned brief holder for the State.

2. The instant application has been filed on behalf of the applicant with the prayer to release him on bail in Case Crime No. 242 of 2021, under Sections 328, 366, 376, 504, 506, 120B IPC, Police Station-Sikrara, District-Jaunpur, during pendency of the trial.

3. F.I.R. of the present case was lodged against the applicant and three others under Section 156(3) Cr.P.C. dated 1.9.2021 and according to the F.I.R. on

22.7.2018 co-accused Sonu and Sanjay has taken the married daughter of the informant and they sold her to co-accused, Sanjay Mishra who committed rape with her and thereafter co-accused Sonu and Sanjay have taken the victim to the applicant and applicant committed rape with her and due to the sexual exploitation of the applicant she also became pregnant.

4. Learned counsel for the applicant submits entire allegation made against the applicant is totally false and improbable and no reliance can be placed on such version.

5. He further submits F.I.R. of the present case was lodged on 11.10.2021 though under Section 156(3) Cr.P.C. and even the application under Section 156(3) Cr.P.C. was moved on 1.9.2021 i.e. after about three years.

6. He further submits although in the statement recorded under Section 161 Cr.P.C. and 164 Cr.P.C. victim stated that applicant sexually exploited her and she also delivered a child with him but it is not a case of sexual exploitation and applicant performed marriage with the victim and in this regard notarized Certificate was also issued which is annexed as Annexure-1 to the affidavit but subsequently some dispute arose between applicant and victim and thereafter she started leveling the allegation of sexual exploitation against the applicant.

7. He further submits the bail application of co-accused Sanjay Mishra has been allowed by Coordinate Bench of this Court and his order has been annexed as Annexure-7 to the affidavit.

8. He further submits that applicant is not having any previous criminal history and in the present matter he is in jail since 27.7.2023.

9. Per contra, learned A.G.A. although opposed the prayer for bail but could not dispute the argument on facts advanced by the learned counsel for the applicant.

10. I have heard learned counsel for the parties and perused the record of the case.

11. Considering the fact that the F.I.R. of the present case was lodged after three years through an application under Section 156(3) Cr.P.C. and admittedly the victim is a major and married lady and her both the statements recorded under Section 161 Cr.P.C. and 164 Cr.P.C. do not appear to be convincing, in my view, applicant is entitled to be released on bail.

12. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

13. Let the applicant-Sunil Kumar Dubey be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

14. In case of breach of any of the above condition, the prosecution will be at

liberty to move an application before this Court for cancellation of the bail of the applicant.

15. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

On the above premise, it is urged by the learned counsel for applicant that the case of present applicant is similar and identical to aforementioned named/charge-sheeted co-accused who have already been enlarged on bail by this Court. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforesaid named/charge-sheeted but bailed out co-accused so as to deny him bail. He, therefore, contends that in view of above and for the facts and reasons recorded in the bail orders of aforesaid co-accused, the applicant is also liable to be enlarged on bail on the ground of parity.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 28.07.2023. As such, he has undergone more than three and half months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. 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 the trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this court. However, he could not dislodge the factual and 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, evidence, complicity of the accused, nature and gravity of offence, accusation made and coupled with the fact that admittedly there is a delay of more than three years in lodging of FIR, the delay in lodging the FIR remains unexplained in the application under Section 156 (3) CrPC as well as in the statement of the first informant recorded under Section 161 CrPC, therefore prima facie the prosecution of the applicant cannot be maintained in view of the law laid down in **P. Rajagopal (supra)**, one of the charging sections mentioned in the charge-sheet against applicant is Section 376 IPC, however no immediate action was taken by the

prosecutrix or the parents of the prosecutrix as such delay in filing application under Section 156 (3) CrPC shall be fatal to the prosecution in view of the law laid down by the Apex Court in **Mandar Deepak Pawar (supra)**, similarly situate and circumstanced co-accused Sanjay Mishra and Sunil Kumar Dubey have already been enlarged on bail, the learned A.G.A. could not point out any such distinguishing feature in the case of the present applicant to distinguish his case from aforementioned charge-sheeted but bailed out co-accused so as to deny bail to the applicant, the police report under Section 173(2) CrPC has already been submitted, as such the entire evidence sought to be relied upon by the prosecution against the applicant now stands crystalized, however in spite of above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the course of trial, the clean antecedents of the applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comment on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Sonu Mishra**, involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 :- 17.11.2023.

Rks.