

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42114 of 2023

Applicant :- Prem Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Ramesh Chandra Yadav, Ajay Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mrs. Preeti Yadav, Advocate holding brief of Mr. Ramesh Chandra Yadav, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Prem Singh seeking his enlargement on bail in Case Crime No.10 of 2023, under Sections 363, 366, 376-D, 342 IPC, police station Junawai, district Sambhal, during the pendency of trial.

Perused the record.

At the very outset, the learned counsel for applicant submits that after completion of investigation, Investigating Officer has submitted charge-sheet dated 05.04.2023, whereby four persons, namely, Hari Singh, Baba Ji, Prem Singh named accused and not named accused Mahesh have been charge-sheeted under Sections 363, 366, 376-D, 342 IPC.

According to the learned counsel for applicant, named and charge-sheeted accused Babaji and Hari Singh and not named accused Mahesh approached this Court by means of Criminal Misc. Bail Application Nos.32260 of 2023 and 31364 of 2023. Both the bail applications were allowed by a common order dated 28.08.2023. For ready reference, the order dated 28.08.2023 is reproduced herein-under :-

"Heard Mr. Praveen Kumar, the learned counsel for applicants- Babaji and Hari Singh and the learned A.G.A. for State.

Perused the record.

These applications for bail have been filed by applicants- Babaji and Hari Singh seeking their enlargement on bail in Case Crime No. 010 of 2023, under Sections 363, 366, 376-D, 342 IPC, Police Station- Junawai, District Sambhal during the pendency of trial.

Record shows that, in respect of an incident which is alleged to have occurred on 19.1.2023 a belated F.I.R. dated 29.1.2023 was lodged by first informant- Maya and was registered as Case Crime No. 010 of 2023, under Sections 363, 366, 376-D, 342 IPC, Police Station- Junawai, District Sambhal. In the aforesaid F.I.R. three persons namely, Hari Singh, Babaji and Prem Singh have been

nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that the daughter of first informant went missing before one month, in respect of which, a missing person report was lodged. Subsequently daughter of first informant returned home. It was dislodged by her that she was kidnapped by named accused.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms Chapter XII Cr.P.C. Thereafter, Investigating Officer recorded the statement of prosecutrix under Section 161 Cr.P.C., which is on record at page 28 of the paper book. The prosecutrix in her aforesaid statement has disclosed a different story which is contrary to the prosecution story as unfolded in the F.I.R. She has stated that she was not only enticed away but named accused Prem Singh subsequently dislodged her modesty. Thereafter the prosecutrix was requested for her medical examination. The prosecutrix in her statement before the Doctor who medically examined her has rejoined her earlier statement under section 161 Cr.P.C. The Doctor who examined the prosecutrix, however, did not find any signs on her body so as to denote commission of sexual assault. Thereafter the statement of the prosecutrix was recorded under section 164 Cr.P.C. Same is on record at page 30 of the paper book. However, the prosecutrix in her aforesaid statement has departed from her earlier statement recorded under section 161 Cr.P.C. She has now stated that four persons, three named accused along with one Mahesh enticed her away and all the four had dislodged her modesty. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of above named accused is established in the crime in question. He, accordingly submitted the charge sheet dated 5.4.2023, whereby applicants and his brother have been charge sheeted under sections 363, 366, 376-D, 342 IPC.

Learned counsel for applicants contends that though the applicants are named and charge sheeted accused but they are innocent. Applicants have been falsely implicated in above mentioned case crime number. It is next contended that statements of the prosecutrix recorded under section 161 Cr.P.C. are tangent to the prosecution story as unfolded in the F.I.R. F.I.R. is not the encyclopedia of the prosecution case but it must reflect the basic prosecution case. F.I.R. was lodged by the mother of the prosecutrix upon disclosure made by prosecutrix to her mother. The departure in the statement of the prosecutrix from the prosecution story unfolded in the F.I.R. made remains unexplained. It is thus contended by learned counsel for applicants that conviction of accused in a case of rape and sexual assault can be maintained even in the absence of medical evidence and on the solitary statement of prosecution. However, in such a circumstance, the statement of the prosecutrix must be clear, consistent and categorical. When the aforesaid statements of the prosecutrix referred to above, are taken as a whole, it is evident that subsequent statement of the prosecutrix suffers from the vice of contradiction and embellishment which remains unexplained. To buttress his submission he has referred to the judgement of Supreme Court in Phool Singh Vs. State of M.P. (2022) 2 SCC 74.

Even otherwise, applicants are men of clean antecedents inasmuch as they have no criminal history to their credit except the present one. Applicants are in jail since 28.3.2023. As such, they have undergone more than five months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants. As such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant. It is thus urged that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they 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 applicants are 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 applicants, with reference to the record at this stage.

Having heard the learned counsel for applicants, 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 applicants, accusation made coupled with the fact that statement of the prosecutrix as recorded under section 161/164 Cr.P.C. disclose a different story from one mentioned in the F.I.R. It is true that F.I.R. is not the encyclopedia of the prosecution case but it must reflect the basic prosecution case. Admittedly, the F.I.R. was lodged upon the disclosure made by prosecutrix to her mother. With regard to credibility of the statements of the prosecutrix as recorded under section 161/164 Cr.P.C. the inherent contradiction in the statement of prosecutrix in her subsequent Statement under section 161 Cr.P.C., which remains unexplained up to this stage, by reason of the judgement of Supreme Court in Phool Singh (Supra) the statements of the prosecutrix are not worthy of credit, police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized, inspite of above, learned A.G.A. could not point out any such circumstance from the record necessitating custodial arrest of applicants during pendency of trial, the period of incarceration undergone, the clean antecedents of applicants but without making any comment on the merits of the case, applicants have made out a case for bail.

Accordingly, the bail applications are Allowed.

Let the applicants- Babaji and Hari Singh, be released on bail in the aforesaid case crime number on 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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."

Learned counsel for the applicant submits that though applicant is a named/charge-sheeted accused yet he is liable to be enlarged on bail. She further contends that the case of present applicant and that of aforementioned named/not named and charge-sheeted but bailed out co-accused is similar and identical, inasmuch as, all have been charge-sheeted under the same sections. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforesaid named/not named and charge-sheeted co-accused so as to deny him bail. On the basis of above, she contends that in view of above and for the facts and reasons recorded in the bail order 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 28.03.2023. As such, he has undergone more than seven 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. She, 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 vehemently 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. However, the learned A.G.A. 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that similarly situate and circumstanced co-accused Babaji, Hari Singh and Mahesh have already been enlarged on bail, all the

accused have been charge-sheeted under same sections, 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 i.e. charge-sheet has already been submitted as such the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the proceeding of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra 2023 Live Law (SC) 373 (paragraph 5)**, the clean antecedents of the applicant and 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 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 **Prem Singh**, 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 :- 30.10.2023.

Rks.