

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41488 of 2023

Applicant :- Gulab Rana

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Noor Muhammad, Yogesh Kumar Srivastava

Counsel for Opposite Party :- G.A., Gunjan Sharma

Hon'ble Rajeev Misra, J.

Heard Mr. Yogesh Kumar Srivastava, the learned counsel for applicant, the learned A.G.A. for State and Ms. Gunjan Sharma, the learned counsel for opposite party-3, High Court Legal Service Committee, High Court, Allahabad.

Supplementary affidavit filed by learned counsel for applicant in Court today is taken on record.

At the very outset, the learned A.G.A. submits that notice of present application for bail has already been served upon first informant/opposite party-4 on 25.9.2023. However, inspite of the service of notice, no one has put in appearance on behalf of opposite party-4 to oppose this application.

This application for bail has been filed by applicant Gulab Rana, seeking his enlargement on bail in Case Crime No. 703 of 2022, under Sections 363, 366 and 376 IPC and 3/4 POCSO Act, Police Station- South, District- Firozabad during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 1.12.2023, a delayed F.I.R. dated 1.12.2022 was lodged by first informant- Sunita Devi and was registered as Case Crime No. 703 of 2022, under Sections 363, 366 and 376 IPC and 3/4 POCSO Act, Police Station- South, District- Firozabad. In the aforesaid F.I.R. the applicant Gulab Rana has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused went missing from 1:00 pm on 1.12.2022. F.I.R. further records that the prosecutrix was enticed away by named accused Gulab Rana.

After lodging of above mentioned first information report,

Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was ultimately, recovered on 26.11.2022. Thereafter the statement of prosecutrix was recorded under section 161 Cr.P.C. Same is on record at page 35 of the paper book. Prosecutrix in her aforesaid statements has not supported the F.I.R. To the contrary she has stated that she was in acquaintance with applicant for the last two years. The prosecutrix has further stated that she was in relationship with applicant. In December, 2023, the prosecutrix herself went with the applicant and accompanied him to Haridwar. Physical relations were established upon consent of the prosecutrix. It is on account of cohabitation that prosecutrix came in family way. Thereafter the prosecutrix was requested for her internal medical examination. However the Doctor who examined the prosecutrix did not find any signs on her body of deceased so as to denote commission of sexual assault. With regard to private part of the prosecutrix, the Doctor opined as follows:
"Old torn"

Certain samples were taken from the body of the prosecutrix for pathological examination. As per USG report, the prosecutrix was found to be in family way and the age of fetus was said to be about four weeks. Ultimately, the statements of the prosecutrix was recorded under section 164 Cr.P.C., same is on record at page 38 of the paper book. Prosecutrix in her statement has rejoined her earlier statement but she has married with applicant on 4.2.2022. During course of investigation, Investigating Officer recovered the certificate/mark-sheet of High School examination undertaken by prosecutrix, wherein her date of birth is mentioned as 20.9.2005. The occurrence giving rise to present criminal proceedings occurred on 1.12.2022. As such, prosecutrix was aged about 17 years and three months on the date of occurrence. Investigating Officer further examined first informant and other witnesses under section 161 Cr.P.C. Witness so examined have supported the F.I.R. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of the named accused is established in the crime in question. Accordingly he submitted charge sheet dated 8.1.2023, whereby applicant has been charge-sheeted under sections 363, 366, 376, and 3/4 POCSO Act.

Learned counsel for applicant submits that though the applicant is a named as well as charge sheeted accused, but he is innocent. Referring to the statement of the prosecutrix recorded under section 164 Cr.P.C. he submits that prosecutrix has solemnized marriage with applicant. It is on account of which,

prosecutrix came in family way. As such, criminality stands washed of. Moreover, the prosecutrix is willing and consenting party, inasmuch as she herself came and joined the applicant. Applicant has neither enticed away the prosecutrix nor abducted the prosecutrix. As such no offence under section 363, 366, can be said to have been committed by applicant since the prosecutrix has solemnized marriage with applicant. Though the prosecutrix was below 18 years of age, yet the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of section 11 (2) of the Hindu Marriage Act. However, no proceedings have been initiated by the prosecutrix for declaration of her marriage with applicant as void. He, therefore, contends that in case applicant is not enlarged on bail a happy family shall stand broken. Supplementary affidavit clearly admits that applicant is ready to discharge his duty as husband.

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 30.12.2022. As such, he has undergone more than eleven months of incarceration. 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 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. 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, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that as per statement of the prosecutrix as noted above, she is willing and consenting party, the prosecutrix has herself joined the applicant and accompanied him to various places, therefore by reason of above, it cannot be said that applicant has either enticed away the prosecutrix or kidnapped the prosecutrix. As such, no offence under section 363 and 366 IPC can be said to have been committed by applicant. Ultimately, the prosecutrix

has solemnized marriage with the applicant, therefore, the charge against applicant under section 376 IPC, and 3/4 POCSO Act is meaning less inasmuch as no deliberate act was committed by applicant for dislodging the modesty of the prosecutrix by committing sexual assault upon her. Ultimately, prosecutrix has solemnized marriage with applicant, which fact is clearly discernible from the statement of the prosecutrix under section 164 Cr.P.C. As such, no criminality, if any, stands washed of, though the prosecutrix was below 18 years of age on the date of her marriage, the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of prosecutrix alone by virtue of section 11 (2) of the Hindu Marriage Act, averments made in supplementary affidavit, wherein applicant is ready to discharge his duty as husband, in case applicant is enlarged on bail, a happy family shall stand broken, the period of incarceration undergone, the clean antecedents of applicant, 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 the prosecution against applicant stands crystalized, yet inspite of above, learned A.G.A. and the learned counsel representing opposite parties- 2 and 4 could not point out any such circumstance from the record necessitating custodial arrest of applicant during pendency of trial, therefore irrespective of the objection 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 **Gulab Rana** 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.

Order Date :- 29.11.2023

Arshad