

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41872 of 2023

Applicant :- Ram Sevak

Opposite Party :- State of U.P.

Counsel for Applicant :- Manoj Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

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

Perused the record.

This application for bail has been filed by applicant Ram Sevak seeking his enlargement on bail in Case Crime No.399 of 2023, under Sections 506, 376 IPC, police station Bahjoi, district Sambhal, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 24.07.2023, a delayed F.I.R. dated 04.08.2023 was lodged by first informant/prosecutrix, namely, Smt. Premwati and was registered as Case Crime No.0399 of 2023, under Sections 376, 506 IPC, police station Bahjoi, district Sambhal. In the aforesaid F.I.R., the applicant Ram Sevak has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. dated 04.08.2023 is to the effect that the named accused i.e applicant herein is alleged to have deliberately and forcibly dislodged the modesty of the prosecutrix by committing rape upon her.

After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The statement of the prosecutrix was recorded under Section 161 CrPC, which is on record at page 23 of the paper book, wherein she has supported the F.I.R. Subsequent to above, the prosecutrix was requested for her medical examination. The Doctor, who medically examined the prosecutrix, did not find any external injury on her body so as to denote commission of deliberate or forcible sexual assault on her. No injury was seen on the private part of the prosecutrix either. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the result of the same is in negative.

Ultimately, the statement of the prosecutrix was recorded under Section 164 CrPC, which is on record at page 39 of the paper book, wherein she has rejoined her earlier statement recorded under Section 161 CrPC with regard to the allegation of committing rape by the applicant. On the basis of above and statement of other witnesses recorded under Section 161 CrPC as well as other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted charge-sheet dated 14.08.2023, whereby applicant has been charge-sheeted under Sections 506, 376 IPC, police station Bahjoi, district Sambhal.

Learned counsel for the applicant contends that though applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. Referring to the statements of the prosecutrix referred to above he submits that it is the admitted case of the prosecution that the prosecutrix is major as she was aged about 19 years on the date of occurrence. The prosecutrix is a willing and consenting party as is clearly established from her statement recorded under Section 161 CrPC, wherein she has categorically stated that she herself willingly accompanied the applicant. The place of occurrence has been altered in the subsequent statement of the prosecutrix recorded under Section 164 CrPC. On the basis of above, he submits that since the prosecutrix in her aforesaid statements has not remained clear, categorical and consistent therefore no prosecution of the applicant can be maintained on the basis of above. He thus contends that in view of above, the applicant is liable to be enlarged on bail.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. He is in jail since 05.08.2023. As such, he has undergone more than two months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant therefore, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged on the basis of which it can be said that custodial arrest of applicant is absolutely necessary during the pendency of trial. It is thus urged that the 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 the applicant is a named/charge-sheeted accused therefore, he does not deserve any indulgence by this court. According to the learned A.G.A. the prosecutrix is a young girl aged about 19

years and she has remained consistent with regard to the allegation of rape committed by the applicant upon the prosecutrix. He, therefore, submits that no sympathy be shown by this Court in favour of the applicant. 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, accusation made, nature and gravity of offence and coupled with the fact that the prosecutrix is major, as per the admitted case of the prosecution she herself accompanied the applicant, contradiction that has emerged in the statement of the prosecutrix recorded under Section 164 CrPC remains unexplained up to this stage, in spite of the fact that the charge-sheet has been submitted against applicant and therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet the learned A.G.A. could not point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and Another Vs. State of Maharashtra and Another 2023 LiveLaw (SC) 373 (paragraph 5)**, 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 comments on the merit of the case, the applicant has made out a case for bail.

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

Let the applicant **Ram Sevak**, 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 :- 16.10.2023.
Rks.