

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42320 of 2023

Applicant :- Somveer

Opposite Party :- State of U.P.

Counsel for Applicant :- Nagendra Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. N. K. Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Somveer, seeking his enlargement on bail in Case Crime No. 210 of 2023, under Sections 376, 506 IPC, Police Station-Kadarchock, District-Budaun during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 07.04.2023, a delayed FIR dated 29.05.2023 was lodged by first informant/prosecutrix-Smt. Mamta and was registered as Case Crime No. 210 of 2023, under Sections 342, 376, 506 IPC, Police Station-Kadarchock, District-Budaun. In the aforesaid FIR, 2 persons namely (1) Somveer i.e. applicant herein and (2) Hukum Singh have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused Somveer deliberately dislodged the modesty of the prosecutrix in the wheat field.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. wherein the prosecutrix has supported the FIR. The same is on record at page 23 of the paper book. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has rejoined her previous statement under Section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix, did not find any

injury on her person so as to denote commission of deliberate or forceful sexual assault. With regard to the private part of the prosecutrix, the Doctor has opined as follows;-

" Hymen - old torn with healed margin."

8. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. The prosecutrix in her aforesaid statement has reiterated her previous statement under Section 161 Cr.P.C.

9. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of both the accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 09.07.2023 whereby applicant Somveer has been charge sheeted under Section 376, 506 IPC whereas co-accused Hukum Singh has been charge sheeted under Sections 342, 506 IPC.

10. Learned counsel for applicant submits that applicant is innocent. He has been falsely implicated in the crime in question. Though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Attention of Court was then invited to the complaint case filed by applicant Somveer against Sher Singh (husband of the prosecutrix), Bharat and Lokpal. In the aforesaid complaint case, the statement of the complainant and that of his witnesses were recorded under Sections 200/202 Cr.P.C. On the above premise, the learned counsel for applicant contends that present criminal proceedings have been engineered as a counter blast to the criminal proceedings already initiated by the present applicant. Attention of Court was then invited to the judgment of Supreme Court in **Vineet Kumar Vs. State of U.P., (2017) 13 SCC 369** and on basis thereof, it is urged that since present criminal proceedings are wholly malicious inasmuch as, the same have been engineered as a counter blast to the criminal proceedings initiated by applicant against husband of the prosecutrix, therefore, applicant is liable to be enlarged on bail. Even otherwise, the medical evidence does not support the ocular version of the occurrence.

11. 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 05.07.2023. As such, he has undergone more than 3 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, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he 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.

12. 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, 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.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the medical evidence does not support the ocular version of the occurrence, the manner in which, the occurrence is alleged to have been committed is not worthy of credit, prima-facie present criminal proceedings appear to have been lodged as a counter blast to the criminal proceedings initiated by the applicant against the husband of the prosecutrix, 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, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), 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, applicant has made out a case for bail.

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

15. Let the **applicant-Somveer**, be released on bail in the aforesaid case crime number on his 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.

16. 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

Vinay