

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42486 of 2023

Applicant :- Aditya Pandey

Opposite Party :- State of U.P.

Counsel for Applicant :- Rajesh Pathak, Krishna Mohan Singh

Counsel for Opposite Party :- G.A., Akhilesh Kumar Mishra

Hon'ble Rajeev Misra, J.

Heard Mr. Rajesh Pathak, the learned counsel for applicant, the learned A.G.A. for State and Mr. Akhilesh Kumar Mishra, the learned counsel for first informant/opposite party-2.

Counter affidavit filed by learned A.G.A. in Court today is taken on record.

Perused the record.

This application for bail has been filed by applicant R.K. Pandey, seeking his enlargement on bail in Case Crime No.0218 of 2023, under sections 354, 354A, 354B, 323, 504, 506 & 376D IPC, Police Station- Nagar, District- Basti during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 3.8.2023, a belated F.I.R. dated 4.8.2023 was lodged by first informant Sarita (prosecutrix) and was registered as Case Crime No.0218 of 2023, under sections 354, 354A, 354B, 323, 504, 506 & 376D IPC, Police Station- Nagar, District- Basti. In the aforesaid F.I.R. two persons namely, Aditya Pandey and Manish Pandey have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused molested the prosecutrix and torned her clothes.

At the very outset, learned counsel for applicant submits that after aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter the statement of the prosecutrix was recorded under section 161 Cr.P.C, which is on record at page 24 of the paper book. The prosecutrix in her

aforesaid statement has supported the F.I.R. Subsequent to above, the prosecutrix was requested for her medical examination. The Doctor who examined the prosecutrix found following injuries on her person:

"1. A injury abrasion 6.5 x 5 cm and left side middle face bluish colour.

2. A Injury abrsion 6 x 4.5 cm and right side of middle face bluish colour.

3. Abrasion 2.5 x 1 cm Lt. side part of lt. side at lip radish colour.

4. Abrasion 2.5 x 1 cm Lt. side part of Lt. side at lip radish colour.

5. Abrasion 3.5 x .5 cm Rt. Side wrist radish colour.

6. Abrasion 6 x .5 cm and Lt. side of Fore Arm radish colour.

7. Abrasion 2.5 x 1.5 cm and Lt. side to patella radish colour."

Ultimately, the statement of prosecutrix was recorded under section 164 Cr.P.C. Same is on record at page 26 of the paper book. The prosecutrix in her aforesaid statement has traveled beyond the story as unfolded in the F.I.R. as well as her previous statement under section 161 Cr.P.C. For the first time, it has been alleged by the prosecutrix that her modesty was dislodged by named accused by committing rape upon her. During course of investigation, Investigating Officer recorded statements of first informant and other witnesses under section 161 Cr.P.C. Witness so examined have also substantially 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 applicant is established in the crime in question. He, accordingly submitted the charge sheet dated 10.10.2023, whereby applicant has been charge sheeted under sections 354, 354A, 354B, 323, 504, 506 & 376D IPC.

Learned counsel for applicant submits that though the 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 as recorded under sections 161/164 Cr.P.C., it is contended by the learned counsel for applicant that prosecutrix in her aforesaid statements has not remained consistent. The prosecutrix in her statement under section 161 Cr.P.C. has supported the F.I.R. but in her subsequent statement under section 164 Cr.P.C. has departed from her previous statement. A new story, which is alien to the F.I.R. has been unfolded in the aforesaid statement. It is then contended by the learned counsel for applicant that though F.I.R. is not the encyclopedia of the prosecution case but it must disclose the basic prosecution case. To buttress his submission, the learned

counsel for applicant has relied upon following judgements of Supreme Court **Manoj and Ors. Vs. State of Maharashtra (1999) 4 SCC 268; Subhash Kumar Vs. State of Uttarakhand (2009) 6 SCC 641; Achhar Singh Vs. S.O. M.P. (2021) 5 SCC 543**. On the above premise, learned counsel for applicant submits that F.I.R. was lodged by prosecutrix herself and no allegation regarding commission of rape upon her was made in the F.I.R. nor in the statement under section 161 Cr.P.C. He, therefore, contends that implication of applicant for an offence under section 376 IPC is an after thought, therefore, when the statements of the prosecutrix referred to above are taken as a whole, same are inconsistent contrary and suffer from the vice of exaggeration and embellishment for which no explanation has come forward. As such, applicant is liable to be enlarged on bail.

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 4.8.2023. As such, he has undergone more than two months of incarceration. The 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 applicants stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicants during the pendency of trial. 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. and learned counsel for first informant have opposed the prayer for bail. They submit that since applicants are named as well as charge sheeted accused, therefore they do not deserve any indulgence by this Court. Referring to the medico legal report of the prosecutrix, it is urged that since the prosecutrix has sustained injuries, therefore, the occurrence cannot be denied. Applicant has failed to show how the prosecutrix came to suffer the said injuries. There is nothing on record to infer false or malacious prosecution of the applicant. As such, no sympathy be shown by this court in favour of 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, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the F.I.R. giving rise to present criminal proceedings was lodged by prosecutrix herself. In

the F.I.R., no allegations with regard to commission of rape by the applicant upon the prosecutrix has been made, the prosecutrix in her statement under section 161 Cr.P.C. has supported the F.I.R. but has not made any allegation with regard to commission of rape upon her, for the first time in her subsequent statement under section 164 Cr.P.C, the allegation with regard to commission of rape by named accused has surfaced, when the statements of the prosecutrix referred to above are taken as a whole, same are inconsistent, contradictory and therefore suffer from the vice of exaggeration and embellishment for which no explanation has come forward from prosecutrix herself, therefore F.I.R. is not the encyclopedia of the prosecution case there is no allegation of rape in the F.I.R., even when the F.I.R. was lodged by the prosecutrix herself, the period of incarceration undergone, the clean antecedents of applicant, 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 crystalized yet inspite 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, 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, applicant has made out a case for bail.

Accordingly the bail application is **allowed**.

Let the applicant **Aditya Pandey** be released on bail in 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.

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 :- 22.11.2023

Arshad