

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44255 of 2023

Applicant :- Faisal

Opposite Party :- State of U.P.

Counsel for Applicant :- Mashaluddin Shah

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Chetan Prakash, Advocate holding brief of Mr. Mashaluddin Shah, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by applicant Faisal seeking his enlargement on bail in Case Crime No.262 of 2023, under Sections 354, 452, 506, 376 IPC, police station Rasulpur, district Firozabad, during the pendency of trial i.e. Sessions Trial No.1832 of 2023 (State Vs. Faisal @ Faisal) and now pending in the court of Sessions Judge, Firozabad.

Perused the record.

Record shows that first bail application of applicant was rejected by this Court vide order dated 02.08.2023 passed in Criminal Misc. Bail Application No.31479 of 2023 (Faisal Vs. State of U.P.). For ready reference, the same is reproduced herein-under :-

"1. Supplementary affidavit filed by the learned counsel for applicant in court today is taken on record.

2. Heard Mr. Mashaluddin Shah, the learned counsel for applicant, the learned A.G.A. for State and Mr. Nirbhay Singh who has put in appearance on behalf of first informant by filing his Vakalatnama in Court today, which is taken on record.

3. This application for bail has been filed by applicant Faisal seeking his enlargement on bail in Case Crime No. 262 of 2023 under Sections 354, 452, 506, 376 I.P.C., Police Station-Rasulpur, District Firozabad during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 26.04.2023, a delayed F.I.R. dated 30.04.2023 was lodged by first-informant Roshni and was registered as Case Crime No. 262 of 2023 under Sections 354, 452, 506, 376 I.P.C., Police Station-Rasulpur, District Firozabad. In the aforesaid F.I.R., applicant Faisal has been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused i.e. applicant herein entered the house of the first informant on 26.04.2023 at 08:40 p.m. and thereafter, deliberately and forcibly dislodged the modesty of the prosecutrix.

6. Learned counsel for applicant contends that though, applicant is a named and charge-sheeted accused inasmuch as the charge sheet has been submitted on 26.04.2023, yet he is liable to be enlarged on bail. The prosecutrix is major. She is a willing and consenting party. Applicant and the prosecutrix were living in live in relationship. As such, no offence as complained of can be said to have been committed by the applicant. Applicant is in jail since 02.05.2023. As such, he has undergone almost more than 3 months of incarceration. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. 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. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the course of trial. The medical evidence does not support the ocular version of the occurrence. He 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.

7. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named as well as charge-sheeted accused, therefore, he does not deserve any indulgence by this Court. They have then invited the attention of Court to the F.I.R. and the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. On the basis of above, it is sought to be urged that the prosecutrix in her aforesaid statements has fully supported the F.I.R. Upto this stage, there is no material on record to conclude that the prosecutrix and the applicant were living in live in relationship. Learned A.G.A. has then referred to the provisions contained in Section 375 IPC and on basis thereof, he contends that an offence under Section 376 is not only confined to penetration sexual assault but also otherwise. Referring to the judgment of the Supreme Court in Phool Singh Vs. State of M.P. (2022) 2 SCC 74, he contends that the prosecution of an accused for an offence of rape or sexual assault can be maintained, even in the absence of medical evidence and on the solitary statement of the prosecutrix. However, in such circumstance, the statement of the prosecutrix must be clear and categorical. When the aforesaid list is applied to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C., it is apparent that the prosecutrix has been clear and categorical in her aforesaid statements. As such the same falls in the category of impeccable evidence. Applicant is guilty of dislodging the modesty of the prosecutrix who is a young girl aged about 18 years. As such, no sympathy be shown by this Court in favour of applicant.

8. When confronted with above, the learned counsel for applicant could not overcome the same.

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of of record, evidence, complicity of applicant nature and gravity of offence coupled with the fact that the prosecutrix in her statements under Section 161/164 Cr.P.C. has supported the F.I.R., upto this stage, there is nothing on record to infer malicious or false prosecution of the applicant or to doubt the credibility of the prosecutrix, the defence that the applicant and the prosecutrix were living in live in relationship is unfounded as nothing has emerged on the record to support the above, the prosecutrix is a young girl aged about 18 years whose modesty was deliberately and forcibly sought to be dislodged by the applicant, the judgment of the Supreme Court in Phool Singh (Supra) but without making any comments on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

10. In view of above, the bail application fails and is liable to be rejected.

11. It is accordingly rejected."

Learned counsel for applicant contends that subsequent to the order dated 02.08.2023, the trial of the applicant commenced by way of Sessions Trial No.1832 of 2023 (State Vs. Faidal @ Faisal) under Sections 452, 354, 376, 506 IPC, police station Rasulpur, district Firozabad. In the aforesaid trial, the prosecutrix, namely, Roshni has deposed before the court below as PW-1. However, the prosecutrix in her statement before the court below has not supported the FIR. To the contrary, she has been declared hostile by the prosecution itself. The copy of statement of the prosecutrix (PW-1) has been brought on record as Annexure-'6' to the affidavit filed in support of present applicant for bail. On the above premise, he submits that once the prosecutrix has herself not supported the FIR therefore, no useful purpose shall be served in prolonging the custodial arrest of applicant. He therefore, contends that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 02.05.2023. As such, he has undergone approximately 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 applicant stands crystalized. Since the statement of the prosecutrix itself has been recorded and she has not supported the FIR, it cannot be said that in case applicant is enlarged on bail he shall terrorize the witnesses or hamper the course of trial. As such, no useful purpose shall be served in prolonging the custodial arrest of applicant. He, therefore, submits 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 opposed the prayer for bail. He submits that simply on the basis of statement of PW-1 i.e. the prosecutrix, it cannot be inferred that applicant is innocent. However, he could not dislodge the factual and legal submissions urged by the learned counsel for the 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 in her deposition before the court below as PW-1 has not supported the FIR therefore has been declared hostile by the prosecution itself as is evident from her statement copy of which is on record as Annexure-'6' to the affidavit filed in support of present application for bail, as the statement of the prosecutrix has itself been recorded who has not

supported the FIR, it cannot be said that in case applicant is enlarged on bail he shall terrorize the witnesses or hamper the course of trial, therefore irrespective of the objections raised by the learned A.G.A. to the present application for bail this Court finds that no useful purpose shall be served in prolonging the custodial arrest of the applicant, the police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet in spite of above the learned A.G.A. could not point out from the record any such circumstance necessitating the custodial arrest of the applicant during the pendency of trial, 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 merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Faisal**, 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 :- 1.12.2023.
Rks.