

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42974 of 2023

Applicant :- Mayank @ Ram Sharan

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

Counsel for Applicant :- Rajendra Singh Yadav

Counsel for Opposite Party :- G.A.,Manisha Chaturvedi,Narayan Swaroop,Rajpal

Hon'ble Rajeev Misra,J.

1. Heard Mr. Pradeep Kumar Yadav, Advocate, holding brief of Mr. Rajendra Singh Yadav, the learned counsel for applicant, the learned A.G.A. for State, Mrs. Manisha Chaturvedi, the learned counsel representing first informant opposite party-2 and Mr. Rajpal, the learned counsel representing first informant opposite party-4.

2. Perused the record.

3. This application for bail has been filed by applicant-**Mayank @ Ram Sharan** seeking his enlargement on bail in Case Crime No.446 of 2023, under Sections 376 I.P.C.,and Section 5/6 POCSO Act, Police Station- Shikohabad, District- Firozabad during the pendency of trial.

4. Record shows that an F.I.R dated 18.06.2023 was lodged by first informant/prosecutrix and was registered as Case Crime No.446 of 2023, under Sections 376 and 120-B I.P.C. Police Station-Shikohabad, District- Firozabad. In the aforesaid F.I.R. four persons namely Mayank@ Ram Sharan (applicant) Satish Chandra (father of main accused) mother of main accused (name unknown) and Murli (Brother of the main accused) have been nominated as named accused.

5. Learned counsel for applicant submits that on account of co-habitation of prosecutrix and applicant, the prosecutrix came in family way and ultimately delivered a male child on 17.02.2023. The applicant was initially unwilling to marry the prosecutrix and is now ready and willing to marry to the prosecutrix. It is on account of aforesaid fact that a categorical averment has been made in paragraph 15 of the affidavit filed in support of present application for bail. On the basis of above, he therefore, submits that applicant is liable to be enlarged on bail.

6. 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 23.06.2023. As such he has undergone more than 4 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the course of trial. He therefore 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.

7. Per contra the learned A.G.A. for State, the learned counsel representing first informant opposite party-4 and the learned counsel representing opposite party-2 have vehemently opposed the prayer for bail. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant opposite party-4, the learned counsel representing opposite party-2, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that since applicant has made a categorical averment in para 15 of the affidavit that he wants to marry to prosecutrix, inspite of the fact that the charge sheet has already been submitted, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet inspite of above, the learned A.G.A. the learned counsel representing first informant opposite party-4 and the learned counsel representing opposite party-2 could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the clean antecedents of applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A., the learned counsel representing first informant opposite party-4 and the learned counsel representing opposite party-2 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.

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

10. Let the applicant- **Mayank @ Ram Sharan**, 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.

11. 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 :- 3.11.2023/Imtiyaz