

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43412 of 2023

Applicant :- Jitendra Kumar Yadav

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Chandra Prakash Misra, Sushil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. C.P. Misra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sanjay Shukla, Advocate, who has put in appearance on behalf of first informant by filing his vakalatnama today in Court which is taken on record.

Supplementary affidavit filed by learned counsel for applicant in Court today is taken on record.

This repeat application for bail has been filed by applicant-Jitendra Kumar Yadav seeking his enlargement on bail in Case Crime No. 309 of 2023, under Section 376, 323, 504, 506 IPC, Police Station- Jhangaha, District Gorakhpur, during the pendency of trial.

Record shows that first bail application of applicant was rejected by this Court vide order dated 25.8.2023, passed in Criminal Misc. Bail Application No. 34979 of 2023 (Jitendra Kumar Yadav Vs. State of U.P. and Another). For ready reference the order dated 25.8.2023 is reproduced herein under:

"1. Heard Mr. Chandra Prakash Misra, 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-Jitendra Kumar Yadav seeking his enlargement on bail in Case Crime No. 309 of 2023, under Sections 376, 323, 504, 506 IPC, Police Station-Jhangaha, District-Gorakhpur during the pendency of trial.

4. Record shows that an FIR dated 27.06.2023 was lodged by first informant/prosecutrix namely Suman Gupta and was registered as Case Crime No. 309 of 2023, under Sections 376, 313, 323, 504, 506 IPC, Police Station-Jhangaha, District-Gorakhpur. In the aforesaid FIR, applicant-Jitendra Kumar

Yadav and 3 others namely - Kaushlya Devi, Neelam and Bittu have been nominated as named accused.

5. The gravamen of the allegations made in the FIR to the effect that named accused i.e. applicant Jitendra Kumar Yadav on the false promise of marriage repeatedly and continuously dislodged the modesty of the prosecutrix by committing rape upon her. The applicant is further alleged to have pressurized the prosecutrix to have physical relation with his friends. The FIR further records that ultimately the applicant is said to have resiled from the promise of marriage so made to the prosecutrix.

6. At the very outset, the learned A.G.A. submits that applicant is a married man. In spite of the fact that he did not obtain divorce from his first wife, applicant has indulged in adultery/bigamy, which is not permissible under the Hindu Law. The prosecutrix in her statements under Section 161/64 Cr.P.C. has fully supported the prosecution story. Attention of the Court was then invited to the following judgments of the Supreme Court - (i). Sonu alias Subhash Kumar Vs. State of U.P., 2021 SCC OnLine SC 181, (ii). Pramod Suryabhan Pawar Vs. State of Maharashtra, 2019 SCC OnLine SC 1073, (iii). Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108, (iv). Criminal Appeal No. 442 of 2022 (Mandar Deepak Pawar Vs. State of Maharashtra and Another) decided on 27.07.2022 and (v). Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89. On the above premise, the learned A.G.A. submits that no indulgence be granted by this Court in favour of applicant.

7. When confronted with above, the learned counsel for applicant could not overcome the same. He, however, invited the attention of the Court to the statement of the prosecutrix, which is on record at page 37 of the paper book and on basis thereof, he submits that since the case of prosecutrix that she came in family way on account of act of applicant was disbelieved by the Investigating Officer, therefore, the entire prosecution story is liable to be disbelieved.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, accusations made coupled with the fact that it is an undisputed fact that applicant is a married man but without obtaining divorce from his first wife, applicant had indulged in extra marital affair i.e. adultery/bigamy, which is not permissible under the Hindu Law, the prosecution story being fully substantiated by the prosecutrix in her statements under Sections 161/164 Cr.P.C., therefore, irrespective of the clean antecedents of the applicant, the period of incarceration undergone, the submissions urged by the learned counsel for applicant, this Court does not find any good ground to enlarge the applicant on bail.

9. As a result, present application for bail fails and is liable to be rejected.

10. It is accordingly rejected. "

Learned counsel for applicant contends that subsequent to the order dated 25.8.2023, the prosecutrix has filled an application under section 12 of the Protection of Women from Domestic Violence Act 2005, wherein she has stated that she has solemnized love marriage with applicant. On the above premise, it is urged by learned counsel for applicant that it is the admitted case of prosecutrix that she has solemnized love marriage with applicant. Consequently, prosecutrix is wife of applicant. In view of above, allegations made in the F.I.R. dated 22.6.2023, giving rise to

present criminal proceedings are false. According to learned counsel for applicant, the prosecutrix is herself not clear, qua the prosecutrix story which she wants to prove against applicant.

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 1.7.2023. As such, he has undergone two months of incarceration. 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 applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 trial.

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, 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 first bail application of applicant was rejected by this Court on the statement made by learned A.G.A. that since applicant is a married man, therefore, the promise of marriage so extended by applicant to prosecutrix is false from the inception inasmuch as no decree of divorce was obtained by applicant. However, the aforesaid recital in the earlier bail order has been contradicted by the learned counsel for applicant with reference to the averments made in paragraphs 10, 11, 12 and 15 of the affidavit filed in support of the bail application. Subsequently, the prosecutrix/first informant has herself filed an application under section 12 of the of Protection of Women from Domestic violence Act, 2005, wherein she has stated that she has solemnized love marriage with applicant, therefore in view of above, prosecutrix is the wife of applicant and consequently, the allegations made in the F.I.R. are itself false and contradictory to the averments made in the application under section 12 of the Act, 2005, the prosecutrix is thus herself not clear qua the prosecution story which she wants to establish against applicant, 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 against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, 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, yet inspite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such incriminating circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objection 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- **Jitendra Kumar Yadav**, be released on bail in the aforesaid case crime number on 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 :- 2.12.2023

Arshad