

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44757 of 2023

Applicant :- Sachin

Opposite Party :- State of U.P.

Counsel for Applicant :- Satyendra Narayan Singh, Pankaj Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Pankaj Kumar Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sanjay Mishra, Advocate who has put in appearance on behalf of first informant/opposite party-2 by filing his vakalatnama in Court today which is taken on record.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Sachin seeking his enlargement on bail in Case Crime No. 47 of 2023 under Sections 366, 376, 506 I.P.C., Police Station-Vaidpura, District-Etawah, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 09.06.2023, a delayed F.I.R. dated 15.06.2023 was lodged by first informant Smt. Kitab Sri (mother of the prosecutrix) and was registered as Case Crime No. 47 of 2023 under Sections 366, 376, 506 I.P.C., Police Station-Vaidpura, District-Etawah. In the aforesaid F.I.R. three persons namely Sachin (applicant herein) Pradeep and Rupram have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that the named accused enticed away the daughter of first informant i.e. prosecutrix namely Sangeeta.

6. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused inasmuch as the charge sheet has been submitted against applicant on 30.09.2023 yet he is liable to be enlarged on bail. He submits that prosecutrix is major. As per the statement of the prosecutrix, she is a willing and a consenting party inasmuch as she has accompanied the accused to different places. Allegation of rape has been made against applicant for the first time in the statement of the prosecutrix under Section 164 Cr.P.C. The contradictions appearing in the subsequent statement of the prosecutrix under Section 164 Cr.P.C. remain unexplained upto this stage. Placing reliance upon the judgement of apex Court in **Phool Singh Vs. State of Madhya Pradesh, (2022) 2 SCC 74** he submits that the prosecution of an accused for an offence of rape and sexual assault can be maintained even in absence of medical evidence and on the solitary statement of the prosecutrix. However, in such a circumstance, the statement of the prosecutrix must be clear, categorical and consistent.

7. On the above premise, the learned counsel for applicant submits that when the statements of the prosecutrix as recorded under Sections 161/164 Cr.P.C. are taken as a whole then they do not fall in the category of impeccable evidence. As such, no conviction of the applicant can be maintained on the basis of aforesaid statements.

8. 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 custody since 14.06.2023. As such he has undergone more than four months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore the entire

evidence sought to be relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency 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.

9. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since the applicant is a named as well as charge-sheet accused, therefore he does not deserve any indulgence by this Court. 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.

10. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant coupled with the fact that the prosecutrix is major, from the perusal of the statement of the prosecutrix it is evident that prosecutrix has accompanied the applicant to different places, prima facie prosecutrix is a willing and consenting party, the judgement of Apex Court referred to above, the contradiction emerging in the subsequent statement of the prosecutrix under Section 164 Cr.P.C. remains unexplained upto this stage, therefore prima facie no prosecution of applicant can be maintained on the basis of the same, , police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has been submitted on 30.09.2023 therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised, yet in spite of above, the learned A.G.A. and the

learned counsel for first informant could not pointed 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 by applicant the judgement of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), therefore, irrespective of the objection raised by them in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

10. Accordingly, present application for bail is **allowed**.

11. Let the applicant-**Sachin** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 26.10.2023/YK