

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44783 of 2023

Applicant :- Raghvendra

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

Counsel for Applicant :- Hanuman Prasad Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Hanuman Prasad Kushwaha, 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-Raghvendra, seeking his enlargement on bail in Case Crime No. 50 of 2023, under Sections 376-D, 394, 452, 308/34, 411 IPC, Police Station-Madawara, District-Lalitpur during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 19.04.2023, a delayed FIR dated 30.04.2023 was lodged by first informant-Jayram Kushwaha (grandson of the victim) and was registered as Case Crime No. 50 of 2023, under Sections 376-D, 394, 452, 308, 34 IPC, Police Station-Madawara, District-Lalitpur. In the aforesaid FIR, 3 persons namely - (1) Kishora, (2) Raghvendra (applicant herein) and (3) Chali @ Jahar have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused are alleged to have dislodged the modesty of the victim i.e. the grand mother of the first informant aged about 75 years repeatedly. The FIR further records that named accused after dislodging the modesty of the grand mother of the first informant, snatched away the jewellery worn by the victim.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. He first recorded the statement of the first informant-Jayram Kushwaha who has detailed the manner of occurrence as well as the events which took place after the occurrence. Thereafter, the injured was medically

examined. The victim in her statement before the Doctor, who medically examined her, has supported the FIR. However, the Doctor who examined the victim, did not find any such signs on her body so as to denote commission of sexual assault. With regard to the private part of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Old, Healed torn No any bleeding."

7. Certain samples were collected from the body of the victim for pathological examination. However, the results of the same are in negative.

8. It is apposite to mention here that prior to medical examination of the victim, the victim was treated at Medical College, Jhansi. At the time of medical examination, certain injuries were found on the head of victim. As per the papers pertaining to the medical examination of the victim at Medical College, Jhansi, fracture was found on the roof of right orbit whereas contusion was found in the right occipital lobe.

9. During course of investigation, Investigating Officer examined various witnesses namely (1) Ratiram, (2) Rajesh, (3) Baldev, (4) Suresh Kumar Kushwaha and (5) Sangeeta under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 27.06.2023 whereby named accused (1) Kishora @ Kishori, (2) Raghvendra (applicant herein) and (3) Chali @ Jahar have been charge sheeted under Sections 376-D, 452, 308, 34, 394, 411 IPC.

10. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Attention of the Court was then invited to the averments made in paragraph 17 of the affidavit filed in support of bail application and on basis thereof, he contends that applicant-Raghvendra has been falsely implicated in the crime in question on account of family dispute. He further submits that if the prosecution case is assumed to be true, then as per the statements of the witnesses under Sections 161 and 164 Cr.P.C., the allegation of committing rape upon the prosecutrix is assigned to co-accused Kishora @ Kishori and not to present applicant. Even otherwise, the medical evidence does not established the commission of an offence under Section 376-D IPC. The victim is an old woman

aged about 75 years and no offence under Section 376-D IPC could have been committed by her. The victim was initially examined on 21.04.2023 at Medical College Jhansi. However, no such injuries were found on her person so as to denote commission of an offence under Section 308 IPC. The victim has not sustained any grievous or fatal injuries. As such, the applicant is liable to be enlarged on bail.

11. 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 01.05.2023. As such, he has undergone more than 6 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, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he 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.

12. 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, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the applicant-Raghvendra has been falsely implicated in the crime in question on account of family dispute, the medical evidence does not establish the commission of an offence under Section 376-D IPC, the victim is an old woman aged about 75 years, as such, no offence under Section 376-D IPC could have been committed upon her, moreover, as per the statements of the victim under Sections 161/164 Cr.P.C., rape was committed upon her by named c-accused Kishora @ Kishori, the victim was initially examined on 21.04.2023 at Medical College Jhansi, however, no such injuries were found on her person so as to denote commission of an offence under Section 308 IPC, 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, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands

crystallized, yet in spite 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, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), 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, applicant has made out a case for bail.

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

15. Let the **applicant-Raghvendra**, be released on bail in the 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.

16. 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 :- 2.11.2023

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