

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45958 of 2023

Applicant :- Ghanshyam

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashish Goyal

Counsel for Opposite Party :- G.A.,Brij Gopal,Devashish Tripathi

Hon'ble Rajeev Misra,J.

Heard Mr. Ashish Goyal, the learned counsel for applicant, the learned A.G.A. for State and Mr. Devashish Tripathi, the learned counsel representing first informant

Perused the record.

This bail application has been filed by the applicant Ghanshyam seeking his enlargement on bail in Case Crime No. 96 of 2023, under Sections 376, 323, 354, 506 IPC, P.S. Kagaraul, District Agra, during the pendency of trial.

Record shows that in respect of certain incident, an F.I.R. dated 24.06.2023 was lodged by first informant/prosecutrix Gudiya and was registered as Case Crime No. 96 of 2023, under Sections 354, 506 IPC, P.S. Kagaraul, District Agra. In the aforesaid F.I.R., applicant Ghanshyam and Rajkumari have been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused Ghanshyam with the connivance of co-accused Rajkumari dislodged the modesty of the prosecutrix.

It is apposite to mention here that in the day, date and time column of the F.I.R., no details have been mentioned. Apart from above, even in the body of F.I.R., details of the occurrence giving rise to present application for bail have also not been mentioned.

Learned counsel for applicant contends that though applicant is a named and charge sheeted accused, yet he is liable to be enlarged on bail. The F.I.R. giving rise to the present criminal proceedings was lodged by the prosecutrix herself. However, in the F.I.R. there is no allegation that the modesty of the prosecutrix was dislodged by committing deliberate or forceful

sexual assault by the applicant upon her.

It is then contended by the learned counsel for applicant that though F.I.R. is not the encyclopedia of prosecution case, but it must disclose the basic prosecution case. To buttress his submission, he has relied upon following judgements of the Supreme Court:-

(1) Manoj and others Vs. State of Maharashtra (1999) 4 SCC 268

(2) Subhash Kumar Vs. State of Uttarakhand (2009) 6 SCC 641

(3) Achhar Singh Vs. S.O. M.P. (2021) 5 SCC 543

With reference to above, it is urged that prosecutrix in her subsequent statements under Sections 161/164 Cr. P. C. has departed from the basic prosecution story as unfolded in the F.I.R. He, therefore, contends that embellishment/exaggeration has erupted in the subsequent statements of the prosecutrix referred to above. However, the same remains unexplained. Upto this stage, no explanation has been offered by the prosecutrix as to why the facts stated in her subsequent statements referred to above could not be stated in the F.I.R. On the above conspectus, the learned counsel for applicant contends that applicant is liable to be enlarged on bail.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 21.08.2023 As such, he has undergone more than three and a half months of incarceration. The police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet has already been submitted. Therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the pendency of trial. 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. and the learned counsel for first informant have opposed the prayer for bail. They submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, they could not dislodge the factual/legal submissions urged by the learned counsel for applicant in support of present application for bail with reference to the Court at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record,

nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the F.I.R. giving rise to the present criminal proceedings was lodged by the prosecutrix herself, however, in the F.I.R. there is no allegation that the modesty of the prosecutrix was dislodged by named accused/applicant by committing deliberate or forceful sexual assault, the prosecutrix in her statements under Section 161/164 Cr. P. C. has departed from the basic prosecution case unfolded in the F.I.R., consequently, the statements of the prosecutrix referred to above suffer from vice of embellishment and exaggeration, which remains unexplained upto this stage, the clean antecedents of the applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr. P. C. having been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, no such circumstance could be pointed out by the learned A.G.A. and the learned counsel for first informant necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the submissions urged by the learned A.G.A. and the learned counsel for first informant in opposition to 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 Ghanshyam 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 :- 16.12.2023

HSM