

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48828 of 2023

Applicant :- Saurabh Patel

Opposite Party :- State of U.P.

Counsel for Applicant :- Shiv Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Sri Sarvesh Dubey holding brief of Sri Shiv Kumar Singh, learned counsel for the applicant, Sri Ajay Singh, learned A.G.A-I for the State and perused the material on record.

3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Saurabh Patel, seeking enlargement on bail during trial in connection with Criminal Complaint No. 701 of 2022 (Vineeta Kushwaha Vs. Saurabh Patel), under Sections 376, 328 IPC, registered at Police Station Nawabad, District Jhansi.

4. The FIR of the matter was lodged on 5.7.2021 by the victim against the applicant and three other persons alleging therein that she is aged about 23 years. She became a friend of the applicant on 6.11.2019 through Facebook after which they started chatting on their mobile. On further friendship between them, the applicant came to her coaching on 2.1.2020 and made a suggestion to marry her by stating that he is in love with her. On the pretext of talking to her, he took her to his rented room where he gave her cold drink after mixing some intoxicating substance after which the victim became unconscious and then sexually exploited her and made an objectionable video of it. On threats to make the said video viral and on further stating that he would marry her later on, he stated that she should come on his call whenever it is there. Further it is stated that the said video was somehow sent by Gaurav Niranjana, the elder brother of the applicant to his mobile who also on threats to make the said video viral called her and committed rape on her. She became pregnant after which she contacted the mother of the applicant who is a nurse in a hospital who then assured her to get married to the applicant but in the meantime she got the said pregnancy aborted by giving her some medicines. The FIR be thus lodged.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the victim on her own showing in the FIR is a major woman aged about 23 years. The matter was investigated after which Final Report No.106 of 2021 dated 11.8.2021 was filed subsequent to which a protest petition dated 10.1.2022 was filed by the victim before the court

concerned against the same in which the inquiry under Section 200/202 Cr.P.C. was done by the court concerned. Subsequently the applicant was summoned under Section 376, 328 IPC and co-accused persons were summoned under other Sections vide order dated 4.5.2022 passed by the C.J.M. concerned. It is argued that no such alleged video has been recovered during investigation. The relationship between the applicant and the victim was consensual relationship. Learned counsel for the applicant while placing Annexure No.2 to the affidavit filed in support of bail application has argued that the applicant had married the victim after which the said marriage was registered before the Marriage Registration Officer, Sadar Second, Jhansi on 20.07.2021, the certificate to the said effect was issued mentioning specifically that marriage between them was solemnized on 14.7.2021. It is argued that the victim/informant is the wife of the applicant. It is argued that the investigating agency found the entire allegations to be false and then filed final report in favour of the accused persons. It has also been pointed out that the applicant is not having any criminal history as stated in para 29 of the affidavit. The applicant is in jail since 18.9.2023.

6. Per contra learned counsel for the State although opposed the prayer for bail but did not dispute the arguments as aforesaid.

7. After hearing the counsel for the parties and perusing the record, it is evident that the applicant and the victim/first informant have married each other and the said marriage has been duly registered before the Marriage Registration Officer for which a certificate to the said effect has been issued. The investigation in the matter had concluded with filing of final report in favour of the accused persons after which protest petition was filed and after due inquiry the applicant and other accused persons have been summoned by the court concerned. The victim as per her own version in the FIR is a major woman.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-**Saurabh Patel**, 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The 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) 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.

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

(v) 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 and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. 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 and send the applicant to prison.

11. The bail application is **allowed**.

(Samit Gopal, J.)

Order Date :- 16.11.2023

Gaurav Kuls