

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46879 of 2023

Applicant :- Rafiq Aalam

Opposite Party :- State of U.P.

Counsel for Applicant :- Krishna Gopal

Counsel for Opposite Party :- G.A.,Ehtesham Afsar Khan,A.Khan

Hon'ble Rajeev Misra,J.

1. Heard Mr. Krishna Gopal, the learned counsel for applicant, the learned A.G.A. for State and Mr. E.A. Khan, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Rafiq Aalam seeking his enlargement on bail in Case Crime No. 200 of 2023, under Sections 366, 504, 506, 376(2)(n) IPC, Police Station-Fatehganj West, District-Bareilly during the pendency of trial.

4. Present application for bail came up for orders on 03.11.2023 and this Court passed the following order:-

"Sri E.A. Khan, Advocate, has filed vakalatnama on behalf of informant, is taken on record.

He prays for and is allowed three days' time to file counter-affidavit.

Put up as fresh case on 08.11.2023 before appropriate Court showing name of Sri E.K. Khan, as learned counsel for informant"

5. However, subsequent to above order dated 03.11.2023, no counter affidavit has been filed by the learned counsel representing first informant.

6. Record shows that in respect of an incident, which is alleged to have occurred on 26.07.2023, a prompt FIR dated 27.07.2023 was lodged by first informant-Bhoore Khan (father of the prosecutrix)

and was registered as Case Crime No. 200 of 2023, under Sections 366, 504, 506 IPC, Police Station-Fatehganj West, District-Bareilly. In the aforesaid FIR, 2 persons namely (1) Rafiq Aalam (applicant herein) and (2) Mustafa have been nominated as named accused.

7. The gravamen of the allegations made in the FIR is to the effect that named accused Rafiq Aalam i.e. applicant herein enticed away the daughter of the first informant i.e. the prosecutrix namely Soni on 26.07.2023.

8. 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. The prosecutrix was recovered on 28.07.2023. Thereafter, her statement under Section 161 Cr.P.C. was recorded. The prosecutrix in her aforesaid statement has alleged that she accompanied the applicant out of her own will. She, subsequently, states that on the next date i.e. 26.07.2023, her modesty was deliberately and forcibly dislodged on the promise of marriage. The prosecutrix was, thereafter, requested for her internal medical examination. However, the Doctor, who medically examined the prosecutrix found following injuries on her person:-

"1. Incision wound - ventral aspect of L. writ 04 cm in size.

2. Nail marks on R. breast.

3. C/o pain in lower back region.

4. Nail marks on into sides of L. thigh."

9. However, with regard to the private parts of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Old torn"

10. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the results of the same are in negative, according to the learned A.G.A. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 43 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of

applicant alone is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 03.09.2023 whereby applicant alone has been charge sheeted under Sections 366, 504, 506, 376(2)(n) IPC whereas the other named accused has been exculpated.

11. 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. The prosecutrix is major. She is a willing and consenting party. The prosecutrix herself came and joined the applicant and thereafter, accompanied him to the hotel. He, therefore, submits that since the prosecutrix was neither abducted nor kidnapped by the applicant, therefore, no offence under Section 366 IPC can be said to have been committed by the applicant. The recital contained in the statements of the prosecutrix referred to above, that the modesty of the prosecutrix was forcibly dislodged after extending the promise of court marriage is palpably false as the prosecutrix eloped with the applicant on 25.07.2023 and the occurrence has occurred only on 26.07.2023. It is thus urged that the prosecution story as unfolded in the FIR is palpably false and unworthy of reliance. He, therefore, submits that applicant is liable to be enlarged on bail.

12. 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 01.08.2023. As such, he has undergone more than 3 and 1/2 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.

13. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted 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.

14. 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 prosecutrix was neither kidnapped nor abducted by the applicant, therefore, no offence under Section 366 IPC can be said to have been committed by the applicant, the prosecutrix is major, she is a willing and consenting party, the modesty of the prosecutrix was dislodged on 26.07.2023 for the first time, therefore, prima-facie, the allegation made in the statement of the prosecutrix that her modesty was dislodged on the false promise of marriage appears to be palpably false, 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. and the learned counsel representing first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned learned counsel representing first informant 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.

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

16. Let the applicant-Rafiq Aalam, 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.

17. 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 :- 21.11.2023

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