

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46562 of 2023

Applicant :- Sarvesh @ Kallu

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Arvind Singh, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant-Sarvesh @ Kallu seeking his enlargement on bail in Case Crime No.75 of 2005 (Criminal Case No.2993 of 2016), under Sections 376, 452, 354, 323, 504, 506 IPC, police station Bakewar, district Etawah, during the pendency of trial.

Perused the record.

At the very outset, the learned counsel for the applicant contends that co-accused Sanjay Singh @ Bablu has already been granted the benefit of anticipatory bail by this Court vide order dated 19.09.2023 passed in Criminal Misc. Anticipatory Bail Application No.10548 of 2023 (Sanjay Singh @ Bablu Vs. State of U.P.). For ready reference, the order dated 19.09.2023 is reproduced herein-under :-

"1. Heard Sri Ravi Prakash Singh, Advocate holding brief of Sri Arvind Singh, learned counsel for the applicant and Sri Pankaj Kumar, learned A.G.A. for the State and also perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Criminal Case No. 2993 of 2016 arising out of F.I.R./Case Crime No. 75 of 2005, under Sections 376, 452, 354, 323, 504, 506 of IPC, Police Station Bakewar, District Etawah, with a prayer to enlarge him on anticipatory bail.

3. As per prosecution story, on 13.01.2003, there was an altercation between the applicant and the informant and his nephew Amar Singh and in this regard, an NCR was instituted by the nephew of the informant Amar Singh on 14.01.2003. The husband of the informant Rajendra Singh had also lodged a complaint before the Judicial Magistrate, concerned on 29.01.2003 u/s 452, 354, 323, 504, 506 of IPC regarding the same date of occurrence i.e. on 13.01.2003. The informant Smt. Soni has also lodged the FIR on 15.05.2005 in respect of the same incident occurred on 13.01.2003.

4. Learned counsel for the applicant has stated that the applicant is maliciously being prosecuted in the present case due to ulterior motive and has apprehension of his arrest. He has nothing to do with the said offence as alleged by the prosecution. Learned counsel has further stated that the FIR is delayed by about two years and four months and it has been instituted after due deliberation and legal consultation. The present FIR has been instituted in

respect of same date and time of incident alleging that rape was committed with her in addition to outraging her modesty. Learned counsel has further stated that the present FIR is hit by Section 300 Cr.P.C. as already an NCR was there. After investigation, the final report (charge-sheet) has been submitted, as such, the applicant had challenged it by filing a petition u/s 482 Cr.P.C. No.18495 of 2005 wherein interim protection was granted to him but the same has been vacated in the light of the judgment of the Apex Court passed in Asian Resurfacing of Road Agency Pvt. and Another vs. Central Bureau of Investigation reported in 2018 (16) SCC 299.

5. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. It is further submitted that the applicant has no criminal history. In case, the anticipatory bail application of the applicant is allowed, he will not misuse the liberty and shall cooperate with trial.

6. On the other hand, learned A.G.A. has vehemently opposed the prayer for grant of anticipatory bail but unable to dispute the submissions raised by the learned counsel for the applicant and also the fact that the applicant has no criminal history.

7. Considering the arguments advanced by the learned counsel for the parties and in view of the law laid down by the Apex Court in the case of "Sushila Aggarwal Vs. State (NCT of Delhi)-2020 SCC online SC 98", the applicant is entitled to be granted anticipatory bail in this case.

8. Without expressing any opinion upon ultimate merits of the case either ways which may adversely affect the trial of the case, the anticipatory bail application of the applicant is allowed.

9. In the event of arrest of the applicant, Sanjay Singh @ Bablu involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

i. that the applicant shall make himself available for interrogation by a police officer as and when required;

ii. that the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;

iii. that the applicant shall not leave India without previous permission of the court;

iv. that the applicant shall not tamper with the evidence during the trial;

v. that the applicant shall not pressurize/ intimidate the prosecution witness;

vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

10. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the bail granted to the applicant.

11. It is made clear that observations made in granting anticipatory bail to the

applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses."

Another co-accused Amit Kumar has also been granted the benefit of anticipatory bail by this Court vide order dated 21.09.2023 passed in Criminal Misc. Anticipatory Bail Application No.10620 of 2023 (Amit Kumar Vs. State of U.P.). For ready reference, the order dated 21.09.2023 is reproduced herein-under :-

"1. Heard Sri Chandra Pal Singh, learned Advocate holding brief for Sri Arvinid Singh, learned counsel for the applicant and Sri Shakeel Ahmad, learned A.G.A. for the State as well as perused the record.

2. The present anticipatory bail application has been filed on behalf of the applicant in Criminal Case No. 2993 of 2016, Case Crime No. 75 of 2005, under Sections 376, 452, 354, 323, 504, 506 IPC, Police Station Bakewar, District Etawah, with a prayer to enlarge him on anticipatory bail.

3. At the very outset, learned counsel for the applicant has stated that the applicant has the apprehension of his arrest and has claimed parity with the co-accused Sanjay Singh @ Bablu, who has already been granted anticipatory bail by another Bench of this Court in Criminal Misc. Anticipatory Bail Application u/s 438 Cr.P.C. No. 10548 of 2023 vide order dated 19.9.2023. The applicant has no criminal history. Since the case of the applicant is at par with the co-accused who has already been granted anticipatory bail, the applicant is also entitled for the same on the ground of parity.

4. The prayer for anticipatory bail has been vehemently opposed by learned AGA. However, the aforesaid factual aspect of the parity to the co-accused has not been disputed by him.

5. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and in light of the judgement passed by this Court in Nanha S/o Nabhan Kha vs. State of U.P., 1993 Cr.L.J. 938 and the judgement passed by the Apex Court in Paras Ram Vishnoi vs. The Director, Central Bureau of Investigation, MANU/SCOR/22410/2021, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for anticipatory bail. The anticipatory bail application is allowed on the ground of parity.

6. In the event of arrest of the applicant, Amit Kumar involved in the aforesaid case crime number, shall be released on anticipatory bail till the conclusion of trial on furnishing a personal bond with two sureties each in the like amount to the satisfaction of the Presiding Officer/Court Concerned, with the conditions that:-

i. that the applicant shall make himself available for interrogation by a police officer as and when required;

ii. that the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;

iii. that the applicant shall not leave India without the previous permission of the court;

iv. that in case, the charge-sheet is submitted, the applicant shall not tamper

with the evidence during the trial;

v. that the applicant shall not pressurize/ intimidate the prosecution witness;

vi. that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

7. In case of breach of any of the above conditions, the court concerned shall have the liberty to cancel the anticipatory bail of the applicant.

8. It is made clear that observations made in granting anticipatory bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses."

With reference to the recital contained in the aforementioned orders, the learned counsel for applicant contends that a complaint dated 29.01.2003 was lodged by the husband of the prosecutrix under Sections 452, 354, 323, 504, 506 IPC. Subsequently, the case was given a new turn by alleging that modesty of the prosecutrix was dislodged. However, Investigating Officer upon material collected by him during course of investigation submitted the charge-sheet dated 07.06.2005, whereby named accused were charge-sheeted under Sections 323, 504, 506 IPC. It appears that subsequently the matter was canvassed by the prosecutrix before the State Human Rights Commission wherein now it has been alleged that her modesty was dislodged. Accordingly, a complaint was made to the State Human Rights Commission. Upon the direction issued by the Commission, the first information report giving rise to the present criminal proceeding came to be lodged. As per the first information report, the occurrence is alleged to have occurred on 13.01.2003 whereas the first information report was lodged on 15.05.2005. As such, the FIR is highly belated. Referring to the judgement of the Apex Court in **P. Rajagopal Vs. The State of Tamil Nadu AIR 2019 SC 2866 (paragraph 8)**, the learned counsel for applicant contends that since there is delay in lodging the FIR and the delay in lodging the FIR has not been explained therefore, the prosecution of the applicant itself cannot be maintained. It is then contended that co-accused who have been assigned similar role in the FIR have already been granted the benefit of Anticipatory Bail. There is no such distinguishing feature on the basis of which the case of present applicant could be so distinguished from aforementioned co-accused who have already been granted the benefit of Anticipatory Bail so as to deny him bail. He, therefore, contends that in view of above and for the facts and reasons recorded in the Anticipatory Bail orders of aforementioned co-accused, applicant is also liable to be enlarged on bail on the ground of parity.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 12.09.2023. As such, he has

undergone more than two months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, contends 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this court. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, complicity of the accused, nature and gravity of offence, accusation made and coupled with the fact that admittedly there is delay of more than two years and four months in lodging the FIR, the delay in lodging the FIR has not been sufficiently explained therefore prima facie the prosecution of the applicant itself cannot be maintained in view of the law laid down in **P. Rajagopal (supra)**, similarly situate and circumstanced co-accused Sanjay Singh @ Bablu and Amit Kumar have already been granted the benefit of anticipatory bail, the learned A.G.A. could not point out any such distinguishing feature in the case of the present applicant to distinguish his case from aforementioned charge-sheeted but bailed out co-accused so as to deny bail to the applicant, the learned A.G.A. submits that the applicant has criminal history of one case under Section 325 IPC, since the applicant is not involved in a case which is regarding any grievous or heinous crime therefore the criminal history of the applicant shall not come in the way of granting bail to applicant in view of three Judges' Bench judgement of the Supreme Court in **Brijmani Devi Vs. Pappu Kumar and Another (2022) 4 SCC 497**, the police report under Section 173(2) CrPC has already been submitted, as such the entire evidence sought to be relied upon by the prosecution against the applicant now stands crystalized, however in spite of above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the course of trial, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comment on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Sarvesh @ Kallu**, 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 :- 22.11.2023.

Rks.