

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46552 of 2023

Applicant :- Nafees

Opposite Party :- State of U.P.

Counsel for Applicant :- Mohd. Zaid, Pratik J. Nagar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Mohd. Zaid, 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-**Nafees** seeking his enlargement on bail in Case Crime No.401 of 2023, under Sections 452, 376, 323 I.P.C., Police Station- Didauli, District- Amroha during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 17.08.2023, a delayed F.I.R. dated 18.08.2023 was lodged by first informant Hina and was registered as Case Crime No.401 of 2023, under Sections 452, 376, 323 I.P.C., Police Station- Didauli, District- Amroha. In the aforesaid F.I.R. applicant Nafees and Ashak Ali have been nominated as named accused.

5. Learned counsel for applicant submits that though applicant is a named and charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant only on 18.09.2023 yet he is liable to be enlarged on bail. Attention of the Court was then invited to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. On the above premise, he submits that prosecutrix has not remained clear, categorical and consistent in her aforesaid statements. The medical evidence does not support the ocular version of the occurrence. Inviting attention of the court to the judgment of the Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74**, learned counsel for applicant contends that the prosecution of an accused for an offence of rape and sexual assault can be maintained even in the absence of medical evidence and on the solitary statement of the prosecutrix alone. However, in such a circumstance, the statement of the prosecutrix

must be of impeccable character. Learned counsel for applicant contends that since there are inherent contradictions in the statements of the prosecutrix, therefore, the same are not worthy of reliance. The medical evidence does not support the ocular version of the occurrence. Present criminal proceedings have been engineered on account of some ulterior motive. The prosecutrix is otherwise major.

6. 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 05.09.2023. As such he has undergone more than one month 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, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the course of trial. He therefore 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.

7. Per contra the learned A.G.A. has opposed the prayer for bail. 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.

8. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, gravity and nature of offence and accusation made coupled with the fact that prima facie the prosecutrix is major, she is a willing and consenting party, the occurrence has taken place in the house of the applicant, the prosecution story as unfolded in the F.I.R. is not very convincing, the judgment of the Supreme Court as noted above, the prosecutrix has not been clear categorical and consistent in her statements under Sections 161/164 Cr.P.C. regarding the manner of occurrence, therefore, the same are not prima facie not worthy of reliance, inspite of the fact that the charge sheet has been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet inspite 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 course of trial, the clean antecedents of the applicant, 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, applicant has made out a case for bail.

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

10. Let the applicant- **Nafees**, be released on bail in 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.

11. 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

Imtiyaz