

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48342 of 2023

Applicant :- Junaid

Opposite Party :- State of U.P.

Counsel for Applicant :- Shobhit Pathak

Counsel for Opposite Party :- G.A.,Farid Ahmad

Hon'ble Rajeev Misra,J.

Heard Mr. Shobhit Pathak, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant-Junaid, seeking his enlargement on bail in Case Crime No.285 of 2023, under sections 366, 376 IPC, Police Station- Asmoli, District Sambhal, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 21.7.2023, a belated F.I.R. dated 24.9.2023 was lodged by first informant- Saine-B, the prosecutrix herself and was registered as Case Crime No.285 of 2023, under sections 366, 376 IPC, Police Station- Asmoli, District Sambhal. In the aforesaid F.I.R. applicant- Junaid has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that on 21.7.2023 when the prosecutrix went to take medicine, applicant gave her some stupefying substance on account of which she became unconscious and thereafter her modesty was dislodged by the named accused by committing rape upon her.

Learned counsel for applicant contends that applicant is a named as well as charge sheeted accused inasmuch as the charge sheet has already been submitted against applicant on 13.10.2023, yet he is liable to be enlarged on bail. Admittedly, the occurrence giving rise to present criminal proceedings occurred on 21.7.2023, whereas the F.I.R. was lodged on 24.9.2023. As such, there is delay of more than two months in lodging the F.I.R. However, neither in the F.I.R. nor in the statement of the prosecutrix recorded under section 161 Cr.P.c any cogent explanation has come forward regarding above.

Placing reliance upon the judgement of Supreme Court in **P. Rajagopal Vs. State of Tamilnadu, AIR 2019 SC 2866 (Paragraph 8)**, he submits that since delay in lodging the F.I.R. has not been explained, the prosecution of applicant itself cannot be maintained. It is then contended that prosecutrix is major. She is a willing and consenting party. Attention of the Court was invited to the medico legal report of the prosecutrix wherein the Doctor who medically examined the prosecutrix wherein he has opined that no signs were found on the body of prosecutrix so as to denote commission of deliberate and forceful sexual assault. Bonafide of the applicant is sought to be established from the Chalan report dated 31.7.2023, copy of which has been brought on record as Annexure-5 to the affidavit filed in support of the bail application, With reference to the said document, the learned counsel for applicant contends that prosecutrix is a willing and consenting party and therefore, allegations made in the F.I.R. that applicant deliberately and forcibly dislodged her modesty is an after thought. The F.I.R. has been lodged only to harass the applicant on account of an extraneous consideration. He, therefore, contends that applicant is liable to be enlarged on bail.

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 25.9.2023, as such, he has undergone two months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 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, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the occurrence giving rise to present criminal proceedings occurred on 21.7.2023, whereas the F.I.R. was lodged on 24.9.2023, as

such, there is delay in lodging the F.I.R, however, the same has not been explained in the F.I.R. or in the statement of the prosecutrix recorded under section 161 Cr.P.C. as such the prosecution of the applicant it self cannot be maintained, the judgement of the Supreme Court in **P. Rajagopal(Supra)**, the prosecutrix is major, prima facie she is a willing and consenting party as is evident from the Chalan report (Annexure-5). Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized, 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 pendency of trial, the clean antecedents of applicant, period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, the clean antecedents of applicant, the period of incarceration undergone but without making any comment on the merits of the case, applicant has made out a case for bail. Accordingly, the bail application is Allowed.

Let the applicant **Junaid**, 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 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.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his/her 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 :- 30.11.2023

Arshad