

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 46633 of 2023

Applicant :- Gulam Ahmad Raza

Opposite Party :- State of U.P.

Counsel for Applicant :- Ganesh Shanker Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ganesh Shanker Srivastava, 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-**Gulam Ahmad Raza** seeking his enlargement on bail in Case Crime No.0193 of 2023, under Sections 376, 452 I.P.C., Police Station-Trilokpur, District- Siddharth Nagar during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 25.08.2023, a delayed F.I.R. dated 26.08.2023 was lodged by first informant/prosecutrix Mantasha and was registered as Case Crime No.0193 of 2023, under Sections 376, 452 I.P.C., Police Station- Trilokpur, District- Siddharth Nagar. In the aforesaid F.I.R. applicant Gulam Ahmad Raza has been nominated as solitary named accused.

5. Learned counsel for applicant submits that in the F.I.R. giving rise to the present criminal proceedings no allegations with regard to commission of rape upon the prosecutrix has been made against the applicant. The said allegation has occurred in the statement of the prosecutrix under Section 164 Cr.P.C. He, therefore, contends that though F.I.R is not the encyclopedia of the prosecution case but it must disclose the basic prosecution case. The absence of the allegations regarding commission of rape by the applicant in the F.I.R. but in the subsequent statement of the prosecutrix amounts to departure from the basic prosecution case. No explanation has come forward from the prosecutrix regarding the departure so made. He, therefore, contends that the implication of the applicant for an offence under Section 376 I.P.C. is an afterthought. To buttress his submission, he has relied upon the following three judgments of the Supreme Court;-

(i). Manoj and Others Vs. State of Maharashtra, (1999) 4 SCC 268,

(ii). Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641,

(iii). Achhar Singh Vs. State of M.P. (2021) 5 SCC 543,

6. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 14.09.2023. As such, he has undergone more than one and a half months. 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. 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 cooperate with the trial.

7. Per contra, the learned A.G.A has opposed the present application 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, nature and gravity of offence, complicity of accused-applicant and accusation made coupled with the fact that in the F.I.R. lodged by the prosecutrix herself, there is no allegation regarding rape upon the prosecutrix, the allegations regarding the same against the applicant have been made for the first time, in the statement of the prosecutrix under Section 164 Cr.P.C. the embellishment that has emerged in the subsequent statement as well as the departure that has occurred in the aforesaid statement of the prosecutrix remains unexplained, inspite of the fact that the charge sheet has been submitted, 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- **Gulam Ahmad Raza**, 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