Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48134 of 2023

Applicant :- Mohammad Jubair
Opposite Party :- State of U.P.
Counsel for Applicant :- Mohd. Hasham
Counsel for Opposite Party :- G.A.,Syed Faiz Hasnain

Hon'ble Rajeev Misra,J.

1. Supplementary affidavit filed by the learned counsel for applicant and short counter affidavit filed by the learned counsel representing first informant in Court today, are taken on record.

2. Heard Mr. Mohd. Hasham, the learned counsel for applicant, the learned A.G.A. for State and Mr. Syed Faiz Hasnain, the learned counsel representing first informant.

3. Perused the record.

4. This application for bail has been filed by applicant-**Mohammad Jubair** seeking his enlargement on bail in Case Crime No. 681 of 2023, under Sections 452, 323, 328, 376, 506 I.P.C., Police Station-Baraut, District- Baghpat during the pendency of trial.

5. Record shows that in respect of an incident which is alleged to have occurred on 09.09.2023, a delayed F.I.R. dated 25.09.2023 was lodged by first informant Smt. Jyoti Tomar (Prosecutrix) and was registered as Case Crime No. 681 of 2023, under Sections 452, 323, 328, 376, 506 I.P.C., Police Station-Baraut, District- Baghpat. In the aforesaid F.I.R. applicant Mohammad Jubair has been nominated as solitary named accused.

6. Referring to the short counter affidavit filed by the first informant, the learned counsel for applicant contends that since the prosecutrix herself is not desirous in pursuing the matter, therefore, the applicant is liable to be enlarged on bail.

7. Though, applicant is having criminal history but has been sufficiently explained. Applicant is in jail since 27.09.2023. As such, he has undergone more than two 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, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of 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.

8. 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.

9. Having heard, the learned counsel for applicant, the learned A.G.A. for State and learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of accused and accusation made and considering the averments made in paragraph 3 of the short counter affidavit filed by the learned counsel representing first informant, the clean antecedents of applicant, the period of incarceration undergone, the police report under Section 173 (2) Cr.P.C i.e. charge-sheet 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. 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. in opposition to the present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

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

11. Let the applicant-**Mohammad Jubair,** 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.

12. 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 :- 7.12.2023
Imtiyaz

Digitally signed by :-
IMTIYAZ AHMAD
High Court of Judicature at Allahabad