

Court No. - 65

**Case :- CRIMINAL MISC. BAIL APPLICATION
No. - 48890 of 2023**

Applicant :- Rahul Rav

Opposite Party :- State of U.P.

**Counsel for Applicant :- Vinay Kumar
Patel, Yashwant Pratap Singh**

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Supplementary affidavit filed by the learned counsel for applicant in Court today, is taken on record.

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

Perused the record.

This bail application has been filed by the applicant Rahul Rav, seeking his enlargement on bail in Case Crime No. 195 of 2023, under Sections 506, 376 IPC, P.S. Buxa, District Jaunpur, during the pendency of trial.

Record shows that an F.I.R. dated 4.8.2023 was lodged by first informant/prosecutrix (Smt. Reeta Gautam) and was registered as Case Crime No. 195 of 2023, under Sections 506, 376 IPC, P.S. Buxa, District Jaunpur. In the aforesaid F.I.R., the applicant Rahul Rav has been nominated as solitary named accused.

Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused, inasmuch as the charge sheet has been submitted against applicant on 30.10.2023, yet the applicant is liable to be enlarged on bail. The F.I.R. is highly belated. Though in the date and time column of the occurrence, no details has been mentioned, but in the body of the F.I.R., it is alleged that the occurrence giving rise to the present criminal proceedings occurred in the year 2020. He, therefore, submits that

the F.I.R. was lodged after more than 2 years from the date of occurrence. He further submits that it is true that the aforesaid F.I.R. came to be registered pursuant to an order passed by the concerned Magistrate under Section 156 (3) Cr. P. C. but the application under Section 156 (3) Cr. P. C. was itself filed on 4.7.2023. Referring to the judgement of Supreme Court in **P. Rajagopal Vs. State of Tamil Nadu, AIR (2019) SC, 2866 (paragraph 8)**, the learned counsel for applicant contends that in case the F.I.R. is belated and no explanation has been offered for lodging the F.I.R. with delay, then prosecution of an accused itself cannot be maintained. Similar view has been taken by the Supreme Court in **Mandar Deepak Pawar Vs. State of Maharashtra and another, 2022 Livelaw (SC) 649**. Prosecutrix is major and she is a willing and consenting party. Referring to the allegations made in the F.I.R., he submits that no criminal proceedings were initiated by the prosecutrix in respect of the allegations made in the F.I.R., which pertain prior to the date of incident mentioned in the F.I.R. It is then contended that the prosecutrix is otherwise a willing and consenting party. As such, no offence as alleged can be said to have been committed by the applicant.

Even otherwise, the applicant is a man of clean antecedents, having no criminal history to his credit except the present one. Applicant is in jail since 21.10.2023. As such, he has undergone more than one and a half months of incarceration. The police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet has already been submitted. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during 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 and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual/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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that there is delay in lodging the F.I.R., however, the delay in lodging the F.I.R. has not been explained, in view of above, the prosecution of applicant itself

cannot be maintained, the judgement of the Supreme Court in **P. Rajagopal (supra)**, in case of consensual relationship, if there is delay in F.I.R., the Apex Court has quashed the proceedings in **Mandar Deepak Pawar (supra)**, prima facie the parties appear to be in consensual relationship for long, the prosecutrix is major, prima facie she is a willing and consenting party, medical evidence does not corroborate the ocular version of the occurrence, in respect of the allegations made in the F.I.R. regarding incidents which have occurred prior to the date of incident mentioned in the F.I.R., admittedly no proceedings were initiated by the prosecutrix nor any explanation has been offered for the same, the police report in terms of Section 173 (2) Cr. P. C. has already been submitted, therefore the entire evidence sought to be relied upon by the prosecutrix against applicant stands crystallized, yet the learned A.G.A. could not point out any such circumstances from the record necessitating the custodial arrest of applicant during the pendency of trial, the clean antecedents of 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 comments on the merits of the case, the applicant has made out a case for bail.

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

Let the applicant **Rahul Rav** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two heavy 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 :- 8.12.2023

HSM