

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48488 of 2023

Applicant :- Brajesh

Opposite Party :- State of U.P.

Counsel for Applicant :- Kuldeep Johri

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Kuldeep Johri, the learned counsel for applicant and the learned A.G.A. for State.
2. Perused the Court.
3. This application for bail has been filed by applicant-Shivlal seeking his enlargement on bail in Case Crime No. 325 of 2023 under Section 376 I.P.C., Police Station-Bilsanda, District- Pilibhit, during the pendency of trial.
4. Record shows that an F.I.R. dated 19.08.2023 was lodged by first informant Geeta Devi i.e. prosecutrix and was registered as Case Crime No. 325 of 2023 under Section 376 I.P.C., Police Station-Bilsanda, District- Pilibhit. In the aforesaid F.I.R. applicant-Brajesh has been nominated as solitary named accused.
5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused by extending false promise of marriage repeatedly and continuously dislodged the modesty of the prosecutrix. The F.I.R. concludes with the recital that applicant ultimately refused to solemnize marriage with the prosecutrix and thus resiled from the promise so extended by him to her.
6. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime

number in terms of Chapter XII Cr.P.C. Statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 27 of the paper book. The prosecutrix in her aforesaid statement has fully supported the F.I.R. Subsequently, the prosecutrix was requested for her internal medical examination but the same was refused by her. Thereafter the statement of the prosecutrix was recorded under Section 164 Cr.P.C.. The prosecutrix in her aforesaid statement has reiterated her earlier statement under Section 161 Cr.P.C. with better particular and details.

7. During course of investigation, Investigating Officer examined first informant and other witnesses namely, Himanshu, Needesh, Gayatri Devi and Smt. Raj Kumari under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. On the basis of above and other material collected by him during course of investigation, he came to the conclusion that complicity of applicant is established in the crime in question. He accordingly submitted the charge-sheet dated 14.09.2023 whereby applicant has been charge-sheeted under Sections 376 I.P.C. .

8. Learned counsel for applicant submits that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The prosecutrix is major. She is a willing and consenting party. There is delay in lodging the F.I.R. inasmuch as the date of occurrence/occurrences has not been mentioned in the body of F.I.R. nor in the day, date and time in the Column of the F.I.R. Even otherwise, there is no false promise of marriage as alleged in the F.I.R. as nothing false which is from inception is alleged to have been disclosed by the applicant. On the above conspectus, it is urged that applicant is liable to be enlarged on

bail.

9. 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 custody since 30.08.2023. As such he has undergone more than three months of incarceration. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has been submitted against applicant, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged on the record necessitating the custodial arrest of applicant during the 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.

10. Per contra, the learned A.G.A. for State has opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheet accused, therefore he does not deserve any indulgence by this Court. The issue as to whether any false promise of marriage was made by applicant or not is a question of fact which can be more appropriately decided during the course of trial. He further submits that as per the scheme of the Code of Criminal Procedure, the statement under Section 164 Cr.P.C. has to be given preference over the statement under Section 161 Cr.P.C. The prosecutrix in her said statement has clearly implicated the applicant in the crime in question on the false promise of marriage. He submits that in view of above and the law laid down by Apex Court in the following judgments:-(i). **Sonu alias Subhash Kumar Vs. State of U.P., 2021 SCC OnLine SC 181**, (ii). **Pramod Suryabhan Pawar Vs. State of Maharashtra, 2019 SCC OnLine SC 1073**, (iii). **Maheshwar Tigga Vs. State of**

Jharkhand (2020) 10 SCC 108, (iv). Mandar Deepak Pawar Vs. State of Maharashtra and Another, 2022 Live Law, SC 649 (v). Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89, the applicant does not deserve to be enlarged on bail. The prosecutrix is a young girl aged about 22 years whose life has been ruined by applicants.

11. On the above premise, the learned A.G.A. submits that since the applicant is guilty of dislodging the modesty of prosecutrix and subsequently refusing to marry her, therefore, no sympathy be shown by this Court in favour of applicant. On the cumulative strength of above, he submits that present application for bail is liable to be rejected by this Court.

12. When confronted with above, the learned counsel for applicant could not over come the same.

13. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant coupled with the fact that the learned counsel for applicant could not dislodge the objections raised by the learned A.G.A. in opposition of the present application for bail, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of present application for bail this Court, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 6.12.2023
YK