

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48616 of 2023

Applicant :- Tejpal

Opposite Party :- State of U.P.

Counsel for Applicant :- Sudarshan Singh, Rakesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sudarshan Singh, 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-Tejpal, seeking his enlargement on bail in Case Crime No. 194 of 2023, under Sections 376, 506, 120-B IPC, Police Station-Hafizganj, District-Bareilly during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 19.04.2023, a delayed FIR dated 30.04.2023 was lodged by first informant Rambir (father of the prosecutrix) and was registered as Case Crime No. 194 of 2023, under Sections 376, 506 IPC, Police Station-Hafizganj, District-Bareilly. In the aforesaid FIR, applicant-Tejpal has been nominated as solitary named accused.
5. The gravamen of the allegations made in the FIR is to the effect that named accused-Tejpal is alleged to have dislodged the modesty of daughter of first informant i.e. the prosecutrix namely Rajkumari. The F.I.R. further records that an obscene video of the prosecutrix was also prepared by the named accused.

6. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page-20 of the paper book. The prosecutrix in her aforesaid statement has supported the F.I.R. The prosecutrix has further stated that even though the applicant is a married man yet he dislodged the modesty of the prosecutrix forcibly. Thereafter the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the doctor has rejoined her previous statement under Section 161 Cr.P.C. However the doctor who medically examined the prosecutrix did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein the prosecutrix has reiterated her previous statement under Section 161 Cr.P.C. On the basis of above and other material collected by Investigating Officer including the statement of witnesses examined under Section 161 Cr.P.C., he came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 11.07.2023 whereby applicant has been charge sheeted under Sections 376, 506, 120-B IPC, Police Station-Hafizganj, District-Bareilly whereas another accused one Anshika @ Astha has also been charge sheeted under Section 120-B I.P.C.

7. Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Referring to the F.I.R. giving rise to the present criminal proceedings, it is urged by the learned counsel for applicant that the F.I.R. giving rise to the present criminal

proceedings has been lodged with delay of eleven days. However neither in the F.I.R. nor in the statement of the first informant, there is any explanation with regard to the delay in lodging the F.I.R. Since the F.I.R. has been lodged with delay and there is no explanation regarding the delay in lodging the F.I.R. therefore prosecution of the applicant itself cannot be maintained. To buttress his submission he has referred to the judgment of Supreme Court in **P. Rajagopal And Ors. Vs. The State of Tamil Nadu, AIR 2019 SC 2866** (paragraph 8). According to the learned counsel for applicant, the applicant and the prosecutrix are neighbours. The grandfather of the applicant had given a loan of Rs. 50,000/- to the grandfather of the prosecutrix and when demand was raised regarding the same, present criminal proceedings have been engineered to overcome the said liability. The said fact is sought to be fortified from the fact that when demand was raised by the applicant regarding money advanced an scuffle took place in between the parties in which the applicant was assaulted. Accordingly, an application under Section 156(3) Cr.P.C. was filed by the applicant which was allowed. Consequently, an F.I.R. dated 01.07.2023 came to be registered as Case Crime No. 0303 2023, under Section 406, 452, 147, 323, 354, 506 IPC, Police Station Hafizganj, District Bareilly. Applicant is innocent. The medical evidence does not support the ocular version of the evidence. On the above conspectus, he therefore contends that since the present criminal proceedings are false, concocted and malicious, therefore applicant is liable to be enlarged on bail.

8. 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 23.05.2023. As such, he has

undergone more than 6 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, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he thus 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.

9. 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, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

10. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that there is delay in lodging the F.I.R., however no explanation has been offered for explaining the delay in lodging the F.I.R. therefore by virtue of the law laid down by the Apex Court in **P. Rajagopal** (*supra*) the prosecution of the applicant itself cannot be maintained, the parties are neighbours, as per the facts and circumstances noted hereinabove present criminal proceedings appear to be prima facie false, concocted and malicious, the medical evidence does not support the ocular version of the occurrence, the clean antecedents of applicant, the period of incarceration undergone, 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 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, the judgment of the Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), 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, applicant has made out a case for bail.

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

12. Let the **applicant-Tejpal**, 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.

13. 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 :- 14.12.2023

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