

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48937 of 2023

Applicant :- Sanjay Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Chandra Prakash Misra, Sushil Kumar Mishra

Counsel for Opposite Party :- G.A., Aakash Sharma

Hon'ble Rajeev Misra, J.

1. Heard Mr. Chandra Prakash Misra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Aakash Sharma, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant Sanjay Singh seeking his enlargement on bail in Case Crime No. 899 of 2023, under Sections 376, 506 IPC and Sections 3/4 Dowry Prohibition Act, P.S. Kasya, District Kushinagar, during the pendency of trial.

4. Record shows that an F.I.R. dated 20.10.2023 was lodged by first informant Sitaram Singh (father of the girl) and was registered as Case Crime No. 899 of 2023, under Sections 376, 506 IPC and Sections 3/4 Dowry Prohibition Act, P.S. Kasya, District Kushinagar. In the aforesaid F.I.R., three persons namely Ramnarayan Singh, Arvind Singh and Sanjay Singh have been nominated as named accused.

5. It is apposite to mention here that that in the day, date and time column of the FIR, nothing has been mentioned. Similarly, in the body of the FIR also the day and dates of the occurrence giving rise to the present criminal proceedings have not been mentioned.

6. The gravamen of the allegations made in the F.I.R. is to the effect that marriage of daughter of first informant was fixed with Sanjay Singh. However, the marriage could not be solemnized as the parents of the applicant i.e. prospective in-laws made demand of dowry, which could not be paid by the father of the girl i.e. first informant. The FIR further records that as the marriage of the

applicant with the girl of the first informant was finalized, therefore, taking advantage of the same, the applicant is alleged to have dislodged the modesty of the prosecutrix repeatedly.

7. After above mentioned F.I.R. was lodged, Investigating Officer proceed with statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. However, after completion of statutory investigation of aforementioned case crime number, Investigating Officer came to the conclusion that the complicity of applicant alone is established in the crime in question. He, accordingly, submitted the charge sheet dated 11.11.2023, whereby applicant has been charge sheeted under Sections 376, 506 IPC and Sections 3/4 Dowry Prohibition Act.

8. 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. The date of birth of the prosecutrix recorded in the High School Certificate is 16.08.1998. The F.I.R. giving rise to present criminal proceedings was lodged on 20.10.2023. As such, the prosecutrix was aged about 25 years on the date of lodging of FIR. As such, she is major. On the above premise, the learned counsel for applicant contends that since prosecutrix is major and a willing and consenting party, therefore, no offence as complained of can be said to have been committed by applicant.

9. Apart from above, it is then contended that the F.I.R. is highly belated inasmuch, in the day, date and time column of the FIR, no particulars about the occurrence/occurrences have been mentioned. The same has neither been detailed in the body of the F.I.R. nor in the column of day and dates. As such, the FIR is prima-facie highly belated. However, no explanation has been offered for explaining the delay in lodging the FIR. Referring to the judgement of Supreme Court in **P. Rajgopal Vs. State of Tamil Nadu, AIR (2019) SC 2866 (paragraph 8)**, the learned counsel for applicant contends that since there is delay in lodging the FIR and no explanation has been offered for explaining the delay in lodging the FIR then in such a circumstance, the prosecution of accused applicant itself cannot be maintained.

10. With reference to the judgment of Supreme Court in **Mandar Deepak Pawar Vs. The State of Maharashtra and Another 2022 LiveLaw (SC) 649**, the learned counsel for applicant contends that in respect of an offence under Section 376 IPC, if the parties were in consensual relationship and there is delay in lodging the FIR coupled with the fact that nothing false was disclosed by the accused to the prosecutrix at the beginning of

relationship then the prosecution of accused cannot be sustained. Admittedly, the criminal proceedings were quashed by the Apex Court in aforementioned case.

11. 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 22.10.2023. 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. 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 necessitating the custodial arrest of applicant during the course of trial. As such, the 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.

12. Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since the applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. According to the learned counsel for first informant, the consent of the prosecutrix was falsely obtained. He, therefore, contends that no sympathy be shown by this Court in favour of applicant. 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.

13. Having heard the learned counsel for applicant, the learned A.G.A. for state, the learned counsel for first informant, 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 prosecutrix is major, she is a willing and consenting party, prima facie no offence as complained of can be said to be made out against the applicant, the F.I.R. is highly belated inasmuch, in the day, date and time column of FIR, no particulars have been mentioned, there is no mention of the same in the body of the F.I.R., the police report in terms of Section 173 (2) Cr. P. C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above neither the learned A.G.A. nor the learned counsel representing first informant could 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), the clean antecedents of applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

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

15. Let the applicant **Sanjay Singh** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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.

16. 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