

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49635 of 2023

Applicant :- Haseen

Opposite Party :- State of U.P.

Counsel for Applicant :- Gyan Prakash Mishra

Counsel for Opposite Party :- G.A.,Kushagra
Srivastava,Shahrukh

Hon'ble Rajeev Misra,J.

1. Heard Mr. Gyan Prakash Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Shahrukh, the learned counsel representing first informant.

2. Perused the record.

3 This application for bail has been filed by applicant-**Haseen** seeking his enlargement on bail in Case Crime No. 274 of 2023 under Sections 376, 452 I.P.C., Police Station-Simbhawali, District- Hapur during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 15.08.2023, a prompt F.I.R. dated 15.08.2023 was lodged by first-informant Muskan (Prosecutrix) and was registered as Case Crime No. 274 of 2023 under Sections 376, 452 I.P.C., Police Station-Simbhawali, District- Hapur. In the aforesaid F.I.R., applicant Haseen has been nominated as solitary named accused.

5. The prosecution story as unfolded in the F.I.R. is to the effect that named accused i.e. applicant herein entered the house of the first informant/prosecutrix and thereafter, deliberately and forcibly dislodged her modesty by committing rape upon her.

6. Learned counsel for applicant contends that though, applicant is a named and charge-sheeted accused, yet he is liable to be enlarged on bail. The prosecutrix is major. She is a willing and consenting party. Moreover, the narration of the events as occurring in the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. make the entire prosecution story improbable and therefore unworthy of reliance. The medical evidence does not support the

ocular version of the occurrence. He, therefore, contends that applicant is liable to be enlarged on bail.

7. 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 16.08.2023. As such he has undergone more than three 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. He therefore, contends that applicant is liable to be enlarged on bail. In case, 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. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, they could not dislodge the factual/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, the learned counsel representing first informant upon perusal of record, evidence, nature and gravity of offence, complicity of accused and accusation made coupled with the fact that the prosecutrix is major, she is a willing and consenting party, moreover, the narration of events as occurring in the statements of the prosecutrix under Sections 161 and 164 Cr.P.C. make the entire prosecution story improbable and therefore unworthy of reliance, 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. 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 inspite of above, the learned A.G.A. and the learned counsel representing first informant 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 Subhaschandra Gangwal & Anr. Vs. The State of Maharashtra & Anr. 2023 Live Law (SC) 373 (paragraph 5)**, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the

present application for bail, but without making any comment on the merits of the case, applicant has made out a case for bail.

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

11. Let the applicant-**Haseen**, be released on bail in 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/her 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 :- 6.12.2023

Imtiyaz