

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 50490 of 2023

Applicant :- Raghuvendra @ Mohit

Opposite Party :- State of U.P.

Counsel for Applicant :- Ram Prakash Dwivedi, Pranshu Dwivedi

Counsel for Opposite Party :- G.A., Rakesh Kumar Tiwari

Hon'ble Rajeev Misra, J.

1. Heard Mr. R.P. Dwivedi, the learned counsel for applicant, the learned A.G.A. for State and Mr. R.K. Tiwari, the learned counsel representing first informant, who has filed short counter affidavit in Court today, which is taken on record.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Raghuvendra @ Mohit seeking his enlargement on bail in Case Crime No. 122 of 2023, under Sections 452, 376, 504, 506 IPC, Police Station-Trans Yamuna, District-Agra during the pendency of trial.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 25.07.2023 passed in Criminal Misc. Bail Application No. 27109 of 2023 (Raghuvendra @ Mohit Vs. State of U.P.). For ready reference, the order dated 25.07.2023 is reproduced hereinunder:-

"1. Heard Mr. Vijit Saxena, the learned counsel for applicant, the learned A.G.A. for State and Mr. P.P. Rao, Advocate, holding brief of Mr. Jai Prakash Singh, the learned counsel representing first informant.

2. Counter affidavit filed by the learned counsel representing first informant in Court today, is taken on record.

3. Perused the record.

4. This application for bail has been filed by applicant-Raghuvendra @ Mohit seeking his enlargement on bail in Case Crime No. 122 of 2023, under Sections 452, 376, 504, 506 IPC, Police Station-Trans Yamuna, District-Agra during the pendency of trial.

5. Record shows that in respect of an incident which is alleged to have

occurred on 28.04.2023, a delayed F.I.R. dated 30.04.2023 was lodged by first informant/prosecutrix-Sanjana Singh and was registered as Case Crime No. 122 of 2023, under Sections 452, 376, 504, 506 IPC, Police Station-Trans Yamuna, District-Agra. In the aforesaid F.I.R., three persons namely - (1) Raghuvendra @ Mohit, (2) Pooja and (3) Juli have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Raghuvendra @ Mohit on the false promise of marriage repeatedly dislodged the modesty of the prosecutrix.

7. After aforementioned 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. The same is on record as Annexure-2 to the affidavit filed in support of the bail application. The prosecutrix in her aforesaid statement has supported the FIR.

8. The prosecutrix was thereafter requested for her medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has rejoined her earlier statement recorded under Section 161 Cr.P.C. The Doctor, who examined the prosecutrix, however, did not find any injury on the body of the prosecutrix. However, with regard to the private part of the prosecutrix, the Doctor has opined as follows; "old, torned, healed"

9. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. The prosecutrix in her aforesaid statement has again rejoined her earlier statement referred to above. In addition, the prosecutrix has stated that she is in family way. During course of investigating, Investigating Officer examined various witnesses including the mother of the prosecutrix under Section 161 Cr.P.C. The witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 01.06.2023.

10. 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. According to the learned counsel for applicant, the prosecutrix is major. She is a willing and consenting party. However, he vehemently submits that the prosecutrix has not come in family way on account of co-habitation with the applicant. He further contends that since there is no DNA report regarding above, it cannot be assumed that applicant is responsible for the event unfolded in the statement of the prosecutrix recorded under Section 164 Cr.P.C. (i.e. the prosecutrix having come in family way).

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 17.05.2023. 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. Up to this

stage, no such circumstance has emerged necessitating the custodial arrest of applicant during course of the trial. No useful purpose shall be served by maintaining the custodial arrest of applicant. It is thus urged 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 the trial.

12. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have opposed the prayer for bail. Learned A.G.A. contends that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Learned A.G.A. has then invited the attention of the Court to the statements of the prosecutrix and on basis thereof, he contends that the prosecutrix in her statements has fully supported the FIR. She has been consistent and categorical. As such, the same are credible and worthy of acceptance. There is nothing on record to infer false or malicious prosecution of applicant either. He, therefore, contends that no sympathy be shown by this Court in favour of applicant.

13. Learned counsel representing first informant has invited the attention of the Court to the counter affidavit filed by him with reference to the Ultra Sound Report of the prosecutrix which is at page 9 of the counter affidavit, he submits that the prosecutrix is in family way and the age of the fetus is 5 weeks and 6 days old. He further contends that the prosecutrix is a young girl aged about 19 years and taking advantage of her innocence, the applicant on the false promise of marriage has repeatedly dislodged her modesty by committing rape upon her. Ultimately, the applicant has resiled from the promise of marriage. Reference was also made to the affidavit filed in support of the present application for bail and on basis thereof, it is submitted that there is no averments made in the affidavit that applicant is a ready to solemnized marriage with the prosecutrix. In the light of the attending circumstances of the case, the learned counsel representing first informant contends that applicant does not deserve any indulgence by this Court. The bail application is liable to be rejected.

14. When confronted with above, the learned counsel for applicant could not overcome the same.

15. 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, accusations made coupled with the fact that the prosecutrix is a young girl aged about 19 years and taking advantage of her innocence and by extending false promise of marriage, the applicant has repeatedly dislodged her modesty which fact stands corroborated by the medical report, the issue as to whether false promise of marriage was made or not is a triable issue subject to the evidence led by the parties during the course of trial but up to this stage, there is nothing on record to infer the innocence of applicant, the following judgments of the Supreme Court;

(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). Criminal Appeal No. 442 of 2022 (Mandar Deepak Pawar Vs. State of Maharashtra and Another) decided on 27.07.2022.

(v). Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89.

and irrespective of the fact that the applicant has clean antecedents and he is in custody since 17.05.2023 but without making any comments on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

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

17. It is accordingly rejected."

5. Learned counsel for applicant contends that after rejection of aforementioned first bail application of applicant, the elders of the family have intervened, and now applicant is ready to solemnize marriage with the prosecutrix. On account of act of applicant, the prosecutrix has also come in family way and the age of the Embryo is reported to be 33 weeks. In case, the marriage of the parties is solemnized, the child that will be born, will have the advantage of legal parentage giving him better rights. On the above premise, it is thus urged that applicant is liable to be enlarged on bail.

6. 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 17.05.2023. As such, he has undergone more than 6 and 1/2 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 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.

7. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. However, the learned counsel for first informant submits that as per instructions received by him, the parties have agreed to solemnize marriage. He, therefore, contends that he will have no objection, in case, the applicant is enlarged on bail to enable him to solemnize marriage with the prosecutrix.

8. 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, accusations made, complicity of accused and coupled with the fact that applicant has now agreed to solemnize marriage with the prosecutrix, the prosecutrix is in family way on account of conduct/act of applicant, the age of the Embryo is now reported to be 33 weeks old, in case, the marriage is solemnized between the parties, the child that will be born, will have the advantage of legal parentage, 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, in view of above, no useful purpose shall be served in prolonging the custodial arrest of applicant during the pendency of trial, 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.

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

10. Let the **applicant-Raghuvendra @ Mohit**, 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.

11. 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 :- 4.12.2023

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