

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 52019 of 2023

Applicant :- Shubham

Opposite Party :- State of U.P.

Counsel for Applicant :- Sujata Choudhary, Mohit Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mrs. Sujata Choudhary, the learned counsel for applicant, the learned A.G.A. for State and Mr. Amit Kumar Singh, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Shubham, seeking his enlargement on bail in Case Crime No. 128 of 2023, under Sections 376, 504, 506 IPC, Police Station-Kanker Khera, District-Meerut during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 10.02.2023, a delayed FIR dated 07.03.2023 was lodged by first informant-Uma (i.e. the prosecutrix herself) and was registered as Case Crime No. 128 of 2023, under Sections 323, 354-A, 504, 506, 509, 511 IPC, Police Station-Kanker Khera, District-Meerut . In the aforesaid FIR, 2 persons namely (1) Sumit and (2) Rimjhim have been nominated as named accused.

5. It is apposite to mention here that though the name of the applicant is mentioned in the body of the FIR and allegations regarding dislodging the modesty of the prosecutrix have also been levelled against applicant yet the applicant has not been nominated as an 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., which is on record at page 26 of the paper book. The name of the applicant-Shubham surfaced in the aforesaid statement of the prosecutrix. As per the said statement, the applicant is alleged to have administered a cold drink to the prosecutrix which contained some stupefying substance, on the basis of which, the prosecutrix is alleged to have become unconscious and thereafter, her modesty was dislodged by the present applicant. Subsequent to above, the

prosecutrix was requested for her internal medical examination. However, the Doctor, who medically examined the prosecutrix, did not find any signs on her body so as to denote commission of deliberate or forceful sexual assault. With regard to the private part of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Normal there is no sign of injury present at the time of examination."

7. Ultimately, the statement of the prosecutrix, was recorded under Section 164 Cr.P.C. wherein the prosecutrix has rejoined her previous statement under Section 161 Cr.P.C. The prosecutrix has made certain improvement in her aforesaid statement to the effect that her modesty was dislodged by pointing a fire arm.

8. During course of investigation, Investigating Officer collected other material also. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused as well as present applicant is established in the crime in question. He, accordingly, submitted the charge sheet dated 04.11.2023 whereby the named accused as well as present applicant have been charge sheeted under Sections 376, 504, 506 IPC.

9. Learned counsel for applicant contends that applicant is innocent. He is not named in the FIR. As such, applicant has been falsely implicated in the crime in question. According to the learned counsel for applicant, though applicant is a charge sheeted accused yet he is liable to be enlarged on bail. It is next contended that complicity of applicant in the crime in question has surfaced in the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. She, however, submits that the FIR was lodged by the prosecutrix herself but yet the applicant was not named in the FIR. Referring to the judgment of the Supreme Court in **(i). Manoj and Others Vs. State of Maharashtra, (1999) 4 SCC 268, (ii). Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641 and (iii). Achhar Singh Vs. State of M.P. (2021) 5 SCC 543**, she contends that though FIR is not the encyclopedia of the prosecution case but it must disclose the basic prosecution case. The omission on the part of the first informant i.e. prosecutrix herself in not nominating the applicant in the FIR as a named accused nor detailing the enmity alleged against applicant in the FIR on account of which criminality alleged could have been committed by applicant clearly shows that the applicant has been implicated in the crime in question as an afterthought. The prosecutrix is otherwise major. The medical evidence does not support the ocular version of the occurrence. The statements of the

prosecutrix otherwise are unreliable being vague. The applicant is being prosecuted in a false criminal case on account of extraneous consideration/motive.

10. 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 25.10.2023. As such, he has undergone more than 1 month 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 on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, she 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.

11. Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that since applicant is a 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.

12. 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 the complicity of applicant has surfaced in the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C., the FIR was lodged by the prosecutrix herself but yet the applicant was not named in the FIR, though FIR is not the encyclopedia of the prosecution case but it must be disclosed the basic prosecution case as held in the aforementioned judgments referred to above, the omission on the part of the first informant i.e. prosecutrix herself in not naming the applicant in the FIR as named accused nor detailing the enmity on the basis of which, the allegations made in the FIR against present applicant could be credit worthy clearly shows that the applicant has been implicated in the crime in question as an afterthought, the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. are not worthy of credit being devoid of material particulars, 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. and the learned counsel representing first informant 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 Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (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 comments on the merits of the case, applicant has made out a case for bail.

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

14. Let the **applicant-Shubham**, 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.

15. 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 :- 5.12.2023

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