

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 25435 of 2025

Applicant :- Sumesh Kumar

Opposite Party :- State of U.P.

Counsel for Applicant :- R P Rajan, Satyajeet Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri R. P. Rajan, learned counsel for the applicant, Sri Ajay Singh, learned AGA-I for the State and perused the material on record.
3. This bail application under Section 483 BNSS has been filed by the applicant **Sumesh Kumar**, seeking enlargement on bail during trial in connection with Case Crime No. 242 of 2024, under Sections 376-D, 120-B IPC, registered at P.S. Kokhraj, District Kaushambi.
4. The FIR of the matter was lodged on 03.08.2024 under Sections 376D, 504, 506 IPC by the victim on the basis of an application moved under Section 156(3) Cr.P.C. against the applicant, Puttun and Virendra alleging therein that Puttun used to visit the house of her sister and on a false promise to marry entangled her in love and took her to Mumbai in 2023. They resided there as husband and wife and physical relationship was established between them. She went there on his luring and stayed there in a rented room for one month after which on 12.12.2023 he called her on phone and told her that his brother-in-law (bahnoi)/Sumesh and brother Virendra are coming on a motorcycle to bring her for marriage and on believing it to be true, she went with them on a motorcycle who then took her from Bharvari to a bridge near the railway line and committed rape on her one by one. Report be lodged and action be taken.
5. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. It is submitted that the victim on her own showing is a major aged about 21 years as per the FIR. It is further submitted that the Chief Medical Officer,

Kaushambi opined her age to be about 20 years but below 25 years and thus she is a major girl. It is submitted that victim went with co-accused Puttun and stayed in Mumbai for a month out of her own sweet will and physical relationship was established with him. It is submitted that the allegation against the applicant and co-accused Virendra of taking the victim with them and committing rape upon her is false and incorrect. While placing para 12 of the affidavit it is submitted that previously the investigation had concluded and a charge sheet dated 25.10.2024 was submitted against co-accused Puttun under Sections 376, 504, 506 IPC and against the applicant and Virendra under Sections 504, 506 IPC. It is submitted that Virendra surrendered before the trial court concerned and was granted bail vide order dated 20.01.2025 passed by Chief Judicial Magistrate, Kaushambi, para 13 of the affidavit and annexure 7 being the order granting him bail has been placed before the Court. Further, while placing para 14 of the affidavit it is submitted that in the meantime Puttun approached this Court for bail through Crl. Misc. Bail Application No. 42414 of 2024 (Puttun Vs. State of U.P.) in which this Court initially passed an order calling for a personal affidavit of the Investigating Officer looking to the facts of the case vide order dated 15.01.2025, the said order has been placed before the Court which is annexure 8 (page 107) of the paper book, the same reads as under:

"During the course of argument, it is pointed out by learned counsel for the applicant that the F.I.R. has been lodged against applicant-Puttun as well as co-accused Virendra and Somesh for the alleged offence under Sections 376D, 504 and 506 I.P.C. The allegation of rape has been levelled by the victim against co-accused Virendra and Somesh also in the F.I.R. as well as in her statement under Sections 161 and 164 Cr.P.C., whereas they have not been charge-sheeted for the offence under Section 376 I.P.C. but charge-sheet has been submitted against them only for the offence under Sections 504 and 506 I.P.C.

Learned A.G.A. is directed to file personal affidavit of the Investigating Officer regarding aforesaid submissions by the next date."

6. Further, while placing page 108 of the paper book (annexure 8 of the affidavit) it is submitted that subsequently not being satisfied by the personal affidavit of the Investigating Officer, the Court directed the DGP, Lucknow to depute some Senior Officer to examine the matter thoroughly, who shall file an affidavit in the matter and an order dated 11.02.2025 was passed therein, the same reads as under:

"Pursuant to order of this Court dated 15.01.2025, Mr. Rakesh Kumar, Sub-Inspector of Police, Police Station Karari, District Kaushambi who was the investigating officer of this case i.e. Case Crime No. 242 of 2024, under Section 376, 504 and 506 I.P.C., Police Station Kokhraj, District Kaushambi has filed his personal affidavit dated 25.01.2025 mentioning inter-alia that during investigation, he has recorded the statement of twelve independent witnesses, who have denied the allegations levelled by the victim against Virendra and

Sumesh, therefore, he has deleted Section 376D I.P.C. from the investigation against co-accused Virendra and Sumesh.

After considering the stand of the investigating officer, I find that the affidavit dated 25.01.2025 is not satisfactory. It is often seen that some of the Investigating Officers are conducting the investigation in an arbitrary manner and despite having material evidence on record, they conclude otherwise in order to extend undue favour to the accused, whereas a fair investigation is one of the essentials of criminal justice system and integral facet of rule of law and legal right of the victim and accused as well.

In view of the above, the Director General of Police, U.P., Lucknow is directed to depute some senior officer to examine the matter thoroughly, who shall file an affidavit by the next date on the issue whether there are materials against the accused persons, namely, Virendra and Sumesh to constitute an offence under Section 376-D I.P.C. or not.

Let this matter be listed on 06.03.2025 as fresh.

Registrar (Compliance) of this Court shall communicate this order to Director General of Police, U.P., Lucknow within 48 hours along with the order dated 05.01.2025 and personal affidavit of the Investigating Officer dated 25.01.2025."

7. Further, it is submitted that subsequently the bail of co-accused Puttun was rejected vide order dated 17.04.2025, copy of which is annexed as annexure 9 to the affidavit. The same reads as under:

"Heard learned counsel for the applicant and learned Additional Government Advocate representing the State.

By means of this application under Section 439 of Cr.P.C., applicant, who is involved in Case Crime No. 242 of 2024, under Sections 376, 504, 506 IPC, police station Kokhraj, district Kaushambi, seeks enlargement on bail during the pendency of trial.

In short compass, the facts of the case are that the first information report has been lodged on the basis of an application under Section 156(3) Cr.P.C. moved by the victim herself. The allegations made in the first information report are that the elder sister of the victim was married in village Tudi Purwa Nauthiya, police station Kokhraj, district Kaushambi. Puttun (applicant) brother-in-law of her sister, who used to come to her house in Kaushambi, on the pretext of marriage, enticed her and took her to Mumbai in March, 2023 and established sexual relations with her as husband and wife. Puttun kept her in a room at Mumbai and thereafter in the village at his uncle's house. After that he left the victim at his house and promised her that after coming back from Mumbai, he will solemnize marriage. On 12.12.2023 Puttun made a phone call that his brother-in-law Sumesh and his brother Virendra are going to take her by motorcycle and asked her to come with them and that they will take her to Mumbai for solemnizing marriage. Believing on the words of Puttun, she accompanied the aforesaid persons on motorcycle. However, on the way, at Moohari garden, both Sumesh and Virendra committed rape on her one by one and threatened her that now she does not deserve for Puttun. The first information report further recounts that the aforesaid incident happened with the conspiracy of Puttun. Thereafter, Puttun used to abuse her and refused to marry her and also threatened to eliminate her.

On the basis of the aforesaid report, a case was registered against the applicant under Sections 376-D, 504, 506 IPC against Puttun (applicant), Virendra and Sumesh. After lodging of the FIR, the statements of the victim under Section 161 and 164 Cr.P.C. were recorded in which she fully supported the prosecution version by reiterating the FIR version. However, the investigating officer has submitted the charge sheet under Section 376 IPC only against the applicant Puttun and exonerated Virendra and Sumesh from the offence under Section 376 IPC and submitted charge sheet under Section 504 and 506 IPC only.

On 15.01.2025, when the case was taken up, the Court passed the following orders:

"During the course of argument, it is pointed out by learned counsel for the applicant that the F.I.R. has been lodged against applicant-Puttun as well as co-accused Virendra and Somesh for the alleged offence under Sections 376D, 504 and 506 I.P.C. The allegation of rape has been levelled by the victim against co-accused Virendra and Somesh also in the F.I.R. as well as in her statement under Sections 161 and 164 Cr.P.C., whereas they have not been charge-sheeted for the offence under Section 376 I.P.C. but charge-sheet has been submitted against them only for the offence under Sections 504 and 506 I.P.C.

Learned A.G.A. is directed to file personal affidavit of the Investigating Officer regarding aforesaid submissions by the next date.

Put up this case as fresh on 27.01.2025."

Pursuant to the aforesaid order of this Court dated 15.01.2025, personal affidavit of the investigating officer Shri Rakesh Kumar, Sub-Inspector of Police, Police Station Karari, district Kaushambi has been filed on 25.01.2025 mentioning inter alia therein that during investigation, he has recorded the statements of twelve independent witnesses, who have denied the allegations levelled by the victim against Virendra and Sumesh, therefore he has deleted Section 376D IPC from the investigation against co-accused Virendra and Sumesh. Thereupon the Court passed the following orders on 11.2.2025:

"Pursuant to order of this Court dated 15.01.2025, Mr. Rakesh Kumar, Sub-Inspector of Police, Police Station Karari, District Kaushambi who was the investigating officer of this case i.e. Case Crime No. 242 of 2024, under Section 376, 504 and 506 I.P.C., Police Station Kokhraj, District Kaushambi has filed his personal affidavit dated 25.01.2025 mentioning inter-alia that during investigation, he has recorded the statement of twelve independent witnesses, who have denied the allegations levelled by the victim against Virendra and Sumesh, therefore, he has deleted Section 376D I.P.C. from the investigation against co-accused Virendra and Sumesh.

After considering the stand of the investigating officer, I find that the affidavit dated 25.01.2025 is not satisfactory. It is often seen that some of the Investigating Officers are conducting the investigation in an arbitrary manner and despite having material evidence on record, they conclude otherwise in order to extend undue favour to the accused, whereas a fair investigation is one of the essentials of criminal justice system and integral facet of rule of law and legal right of the victim and accused as well.

In view of the above, the Director General of Police, U.P., Lucknow is directed to depute some senior officer to examine the matter thoroughly, who shall file an affidavit by the next date on the issue whether there are materials against the accused persons, namely, Virendra and Sumesh to constitute an offence under Section 376-D I.P.C. or not.

Let this matter be listed on 06.03.2025 as fresh.

Registrar (Compliance) of this Court shall communicate this order to Director General of Police, U.P., Lucknow within 48 hours along with the order dated 05.01.2025 and personal affidavit of the Investigating Officer dated 25.01.2025."

Pursuant to the aforesaid order of this Court, an affidavit dated 08.4.2025 has been filed by Shri Prem Kumar Gautam, presently posted as Inspector General of Police, Prayagraj Range, Prayagraj.

It is also mentioned inter alia in the affidavit dated 08.4.2025 that after completing the necessary formalities, censure entry has been awarded to the earlier investigating officer Shri Rakesh Kumar and he has been transferred from police station Karari to Police Lines, Kaushambi and that the Superintendent of Police, Kaushambi has also written a letter to the Additional Director General of Police (Training), Directorate of Police Training, U.P., Lucknow requesting him to send Shri Rakesh Kumar, Inspector to any training institute in order to gain skills for conducting the investigation. The censure entry awarded to Shri Rakesh Kumar shall have the following effect on his service career:

(i) He would not be entitled to bonus for a period of one year.

(ii) His first departmental promotion would be affected.

(iii) The assured career progression (ACP) awarded 10, 16, and 26 years of service would be affected for five years

(iv) He would be be entitled to any posting as a Station House Officer/Station Officer at police station for the period of three years.

In the affidavit it is mentioned that the investigation of the case in question has been transferred to Circle Officer, Kaushambi, who moved an application before the Chief Judicial Magistrate, Kaushambi for making further investigation in the matter. The Chief Judicial Magistrate, Kaushambi vide order dated 04.03.2025 has granted permission to proceed for further investigation. It is also mentioned in the affidavit that looking the gravity of the offence, the investigation of aforesaid case crime No. 242 of 2024, under Sections 376, 504, 506, police station Kokhraj, district Kaushambi has been transferred from Circle Officer, Kaushambi to Additional Superintendent of Police, Kaushambi. The investigation is going on.

It is contended by learned counsel for the applicant that in respect of the incident dated 12.12.2023, the first information report has been lodged on 03.08.2024 for which no plausible explanation has been tendered by the prosecution. It is further submitted that both the victim and the applicant are major and was having love affairs with each other. It is also submitted that the applicant has never made any promise to marry the victim. The medical report of the victim does not support the prosecution version. The applicant does not have any criminal history to his credit. Therefore, the applicant, who is languishing in jail since 03.09.2024 may be enlarged on bail.

Per contra, learned Additional Government Advocate opposed the prayer for bail of the applicant by contending that the statement of the victim has been recorded before the Magistrate under Section 164 Cr.P.C. wherein she has levelled the allegations of rape against Puttun (applicant), Sumesh and Virendra. She further stated that from the relationship of the applicant she became pregnant thrice.

Having considered the submissions of the learned counsel for the parties and examined the matter in its entirety I find that the victim in her application under Section 156(3) Cr.P.C. has specifically stated that after the incident dated 12.12.2023, the victim made complaint to the SHO and the Superintendent of Police, Kaushambi. When no action was taken by the police, she informed the higher officers of the police department on 05.01.2024 by post. On getting no response from the police, she was compelled to file the application under Section 156(3) Cr.P.C. before the Magistrate, who directed for registration and investigation of the case. I also find that the statement of the victim has been recorded before the Magistrate under Section 164 Cr.P.C. in which she has fully supported the prosecution version and also stated that on account of relationship with the applicant she became pregnant thrice, which were got terminated by intoxicating medicines. Further in the medical report dated 06.08.2024, the hymen of the victim was found torn. As on date I do not find anything to disbelieve the statement of the victim.

Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The Courts are, therefore, expected to deal with the cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant and severity of punishment, I do not find any good ground to release the applicant on bail.

Accordingly, the bail application is rejected at this stage.

It is clarified that observations made herein above were only for the purpose of disposal of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence to be adduced uninfluenced by anything mentioned in the order."

8. It is further submitted that further investigation subsequently concluded with opinion that there is sufficient evidence for offence under Sections 376-D, 120-B IPC against the present applicant and Virendra and thus the charge sheet dated 12.06.2025 under the said sections was filed against them, the same is annexed as annexure 14 to the affidavit. It is submitted that as such the investigation in the matter is also not trustworthy. It is submitted that the applicant is the brother-in-law/bahnoi of the main accused Puttun whose bail has been rejected by a co-ordinate Bench of this Court. Further, it is submitted that there is an inordinate delay of about 8 months in lodging of the FIR. It is submitted that the applicant has no criminal history as stated in para 39 of the affidavit and is in jail since 17.04.2025.

9. Per contra, learned counsel for the State opposed the prayer for bail and submitted that the present case is a case of gang rape. The investigation in the matter was not proper and thus directions were issued in the bail application of co-accused Puttun after which further investigation was done and then charge was submitted in the present matter as a case of gang rape. It is further submitted that recital in para 39 of the affidavit that the applicant is having no criminal history is false and incorrect as the applicant is reported to be involved in one more criminal case being Case Crime No. 16 of 2025, under Sections 115(2), 351(2) BNS, 2023, Police Station Kokhraj, District Kaushambi. It is submitted that the applicant is named in the FIR and also in the statements of the victim recorded during investigation. It is further submitted that the bail of co-accused Puttun has been rejected by a co-ordinate Bench of this Court vide order dated 17.04.2025. It is submitted that there is no reason for false implication of the applicant and as such the prayer for bail of the applicant be rejected.

10. After having heard learned counsels for the parties and perusing the records, it is evident that the present case is a case of gang rape. The applicant is named in the FIR and in the statements of the victim recorded during investigation and has been assigned the role of committing rape on her along with other co-accused persons. The Investigating Officer initially tried to help the applicant and other co-accused Virendra which was observed by a co-ordinate Bench in the bail of co-accused Puttun and then certain directions were passed after which further investigation was done and then charge sheet in the matter has been submitted against the

applicant and co-accused Virendra under Sections 376-D, 120-B IPC. No ground for bail is made out. I do not find it a fit case for bail.

11. Considering the totality of the case in particular, nature of evidence available on record, I am not inclined to release the applicant on bail.

12. The bail application is, accordingly, **rejected**.

13. Pending application(s), if any, stand disposed of.

(Samit Gopal, J.)

Order Date :- 24.7.2025

M. ARIF