



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 27865 of 2025

Sandeep Chaudhary

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Suchita Mehrotra
Counsel for Opposite Party(s)	:	Krishna Pratap Yadav, G.A.

Court No. - 80

HON'BLE RAJEEV MISRA, J.

1. Heard Miss Suchita Mehrotra, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Krishna Pratap Yadav, the learned counsel representing first informant.

2. Perused the record.

3. This 3rd application for bail has been filed by applicant-Sandeep Chaudhary, seeking his enlargement on bail in Case Crime No. 548 of 2023, under Sections 376, 406, 420 IPC, Police Station-Kavi Nagar, District-Ghaziabad during the pendency of trial i.e. Sessions Trial No. 601 of 2023 (State Vs. Sandeep Chaudhary), under Sections 420, 406, 376 IPC, Police Station-Kavi Nagar, District-Ghaziabad.

4. The first bail application of applicant was rejected by this Court by a detailed order dated 24.11.2023 passed in Criminal Misc. Bail Application No. 43119 of 2023 (Sandeep Chaudhary Vs. State of U.P.).

5. Subsequently, applicant filed repeat application for bail, which was also rejected by this Court by a detailed order dated 11.11.2024 passed in Criminal Misc. Bail Application No. 33109 of 2024 (Sandeep Chaudhary Vs. State of U.P.). For ready reference, the order dated 11.11.2024 is reproduced hereinunder:-

"1. Heard Mr. Sameer Srivastava, Advocate holding brief of Mr. Vinay Kumar Singh Chandel, the learned counsel for applicant, the learned A.G.A. for State and Mr. Krishna Pratap Yadav, the learned counsel representing first

informant/opposite party-2.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Sandeep Chaudhary seeking his enlargement on bail in Case Crime No. 548 of 2023 under Sections 376, 406, 420 I.P.C., Police Station-Kavi Nagar,, District-Ghaziabad, during the pendency of trial i.e. Sessions Trial No.601 of 2023 (State Vs. Sandeep Chaudhary) under Sections 420, 406, 376 I.P.C. Police Station-Kavi Nagar,, District-Ghaziabad now pending in the Court of District and Sessions Judge, Ghaziabad.

4. First bail application of applicant was rejected by this Court by a detailed order dated 24.11.2023 passed in Criminal Misc. Bail Application No. 43119 of 2023 (Sandeep Chaudhary Vs. State of U.P.). For ready reference, the order dated 24.11.2023 is reproduced herein under:

"1. Heard Mr. Rohit Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Achyut Ji Advocate, holding brief of Mr. Anjit Kumar Verma, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant Sandeep Chaudhary seeking his enlargement on bail in Case Crime No. 548 of 2023, under Section 376-D, 406, 420 I.P.C., Police Station Kavinagar District Ghaziabad during the pendency of trial.

4. Record shows that in respect of incidents which are alleged to have occurred from 11.04.2022 to 28.05.2023, a delayed F.I.R. dated 03.07.2023 was lodged by first informant Hemlata i.e. the prosecutrix herself and was registered as Case Crime No. 548 of 2023, under Section 420, 406, 376-D, 504, 506 I.P.C., Police Station Kavinagar District Ghaziabad (Commissionate). In the aforesaid F.I.R. three persons namely Sandeep Chaudhary (applicant herein), Pooja Chaudhary and Suraj Malik have been nominated as named accused, whereas, an unknown person has also been arraigned as an accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Sandeep Chaudhary (applicant herein) is alleged to have extended a false promise of marriage to the prosecutrix. On the said false assurance the applicant is

further alleged to have been taken a sum of Rs. 11 lacs from the prosecutrix. However, the applicant has neither returned the money taken by him from the prosecutrix nor has fulfilled the promise extended by him to the prosecutrix i.e. to solemnize marriage with the prosecutrix.

6. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned crime number in terms of Chapter XII Cr.P.C. He first recorded the statement of prosecutrix i.e. the first informant itself under Section 161 Cr.P.C., which is on record at page 28 of the paper book. The prosecutrix in her aforesaid statement has not only supported the F.I.R. but has come up with categorical material in support of the F.I.R. Giving rise to the present criminal proceedings. Thereafter the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the doctor, who medically examined her has rejoined her previous statement under Section 161 Cr.P.C. The doctor, who examined the prosecutrix, however, did not find any such injury on the body of the prosecutrix so as to denote commission of deliberate or forceful sexual assault. However, with regard to the private part of the prosecutrix, the doctor has opined as follows.

"No any external mark of injury seen over the body at present and no any bleeding/tear/discharging/ocdine tandems P/v or P/S finding at present."

7. Certain samples were collected from the body of the prosecutrix for pathological examination. However, according to the learned A.G.A. the results of the same are in negative. Ultimately the statement of the prosecutrix was recorded under Section 164 Cr.P.C. The same is on record at page 43 of the paper book. The prosecutrix in her aforesaid statement has reiterated her previous statement under Section 161 Cr.P.C. During course of investigation, Investigating Officer examined the following witnesses under Section 161 Cr.P.C:- Upendra, Rajpal Singh Deshwal, Prashant Kumar, Suraj Malik and Pooja Chaudhary. Witnesses so examined have substantially supported the F.I.R.

8. On the basis of above and other material collected by the Investigating Officer, during course of investigation, he came to the conclusion that allegations made in the F.I.R. with regard to transfer of money and dislodging the modesty of the prosecutrix by extending false promise of marriage are fully established against the applicant. He, accordingly, submitted the charge sheet dated 03.08.2023, whereby, applicant has been charge sheeted under Sections 376-D, 406, 420 I.P.C, unknown

has been charge sheeted under Sections 376-D, 406, 420 I.P.C, whereas the other two named accused namely, Pooja Chaudhary and Suraj Malik have been exculpated.

9. Learned counsel for applicant contends that though applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. He invited the attention of Court to the F.I.R. On the basis of above, he contends that in the date and time column of the F.I.R.it is mentioned that the occurrence giving rise to present criminal proceedings are alleged to have occurred from 11.04.2022 to 28.05.2023. However, the F.I.R. was lodged on 03.07.2023. As such there is delay in lodging the F.I.R. However, the delay in lodging the F.I.R. has not been explained. He therefore submits that since, the delay in lodging the F.I.R. has not been explained, therefore, the prosecution of the applicant itself cannot be maintained.

10. According to the leaned counsel for applicant the prosecutrix is major. She is a willing and consenting party. The bona fide of the applicant is explicit from the fact that as per the medical opinion no such injury was found on the body of the prosecutrix so as to denote commission of deliberate or forceful sexual assault. He, therefore, contends that since prosecutrix is major and she was in consensually relationship with the applicant, as such, no offence under Section 376 I.P.C. can be said to have been committed by the applicant as nothing was done by the applicant to forcefully dislodge the modesty of the prosecutrix.

11. With regard to the bona fide of the applicant and his false implication in the crime in question, the learned counsel for applicant invited the attention of Court to the averments made in paragraph 16 of the affidavit filed in support of the present application for bail. He has then referred to the document occurring at page 83 of the paper book and on basis thereof, he contends that since a sum of Rs. 4 lacs were advanced by the applicant to the prosecutrix, and the prosecutrix has herself failed to return the said amount, consequently, in order to subvert the liability arising out of said payment, the present criminal proceedings have been engineered to falsely implicate the applicant in the crime in question.

12. Per contra, the learned A.G.A. and learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that admittedly, the applicant is a married man and, therefore, the promise made by the applicant to the prosecutrix i.e. he shall solemnize marriage with the prosecutrix was false from the very inception. Applicant is a hindu by religion. Until and unless, he got divorce

from his first wife neither he could extend promise of marriage to the prosecutrix nor could he indulge in extra-marital relationship with the prosecutrix. The criminality committed by the applicant with the prosecutrix clearly falls in the realm of adultery, which is prohibited under the provisions of Section 13 of the Hindu Marriage Act.

13. It is then contended that reliance placed by learned learned counsel for applicant upon the averments made in paragraph 16 of the affidavit and the supporting document occurring at page 83 of the paper book are misconceived. Amount of Rs. 4 lacs was given by the prosecutrix herself to the applicant and in lieu thereof, an affidavit was prepared whereby, the applicant acknowledged receipt of Rs. 4 lacs. They, therefore submits that in view of above, it cannot be said that the applicant has been falsely implicated in the crime in question so as to avoid the financial liability arising out of the advanced alleged to have been made by the applicant to the prosecutrix. With regard to the delay in lodging the F.I.R., the learned A.G.A. and the learned counsel representing first informant with reference to the material on record, submit that the cause of action for lodging the F.I.R. is not a singular act of the applicant but on account of repeated acts of applicant i.e. repeated cause of action. The prosecutrix in the F.I.R. which has been lodged by her though, has not specifically detailed the circumstances resulting in the delay in lodging the F.I.R., but in her statement under Section 161 Cr.P.C. has categorically stated that on account of assurance extended by accused on 28.05.2023 that the amount has been arranged and shall be returned to the prosecutrix, the prosecutrix believed the bona fide of the applicant and therefore, withheld the lodging of the F.I.R. On the above premise, it is urged by the learned counsel representing first informant as well as the learned A.G.A. there is no deliberate negligence or laches on the part of the first informant/prosecutrix. The prosecutrix bona-fidely believed the assurance given by the applicant with regard to return of money. However, when the applicant failed to fulfil the promise so made by him that the present F.I.R. was lodged. It is thus, contended that since there is no deliberate negligence or laches on the part of the first informant in lodging the F.I.R. therefore, the present criminal proceedings are clearly maintainable. On the above conspectus, it is thus urged by the learned A.G.A. as well as the learned counsel representing first informant that no good or sufficient ground is made out to enlarge the applicant on bail.

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 and the learned counsel representing first informant, upon perusal of record, evidence, complicity of applicant and accusation made, the nature and gravity of offence coupled with the fact that though, applicant is a married man yet he extended the promise of marriage to the prosecutrix i.e. he shall solemnized marriage with the prosecutrix, during the subsistence of the marriage of the applicant he indulged in extra marital relationship with the prosecutrix, the prosecutrix was made to believe the bona fide of the applicant on account of his conduct, therefore, prima facie the promise made by the applicant to the prosecutrix that he shall solemnize marriage with the prosecutrix is false right from the very inception inasmuch as no divorce decree was granted in favour of the applicant before he entered into extra marital relationship with the prosecutrix or during the pendency of relationship, the judgments of the Supreme Court in

1. Pramod Suryabhan Pawar Vs. State of Maharashtra (2019) 9 SCC 608.

2. Sonu @ Shubash Kumar Vs. State of U.P. 2021 SCC Online SC 181.

3. Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108.

4. Deepak Mandar Pawar Vs. State of Maharashtra 2022 LiveLaw (SC) 649.

5. Naim Ahmad Vs. State (NCT of Delhi) 2023 SCC Online SC 89, the payment of the amount alleged in the F.I.R. is substantially through electronic mode, however, no document has been brought on record by the applicant in support of the bail application to establish that the amount alleged in the F.I.R. was not credited in the account of applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient good to enlarge the applicant on bail.

16. In view of above, the bail application fails and is liable to be rejected.

17. It is, accordingly rejected.

Order Date :- 24.11.2023 "

5. Learned counsel for applicant submits that applicant is in jail since 21.07.2023.

As such, he has undergone more than one year and four months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. was submitted against applicant on 03.08.2023. However, the trial of applicant has not yet concluded. He therefore contends that applicant is liable to be enlarged on bail.

6. Even otherwise applicant is a man of clean antecedents having no criminal history to his credit except the present one. The police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to relied upon by the prosecution against applicant stands crystallised. 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 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. for State and Mr. Krishna Pratap Yadav, the learned counsel representing first informant have vehemently opposed the prayer for bail. They submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Considering the nature and gravity of offence and also the period of punishment provided for the offence alleged to have been committed by applicant, the period of incarceration undergone by applicant is by itself not so sufficient a circumstance so as to enlarge the applicant on bail. It is thus urged that no new, good or sufficient ground has emerged so as to enlarge the applicant on bail. As such, this repeat application for bail is, therefore, liable to be rejected by this Court.

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

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant. upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant, coupled with the fact that objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to this repeat application for bail could not be dislodged by the learned counsel for applicant, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of present repeat application for bail but without making any comment on the merits of the case, this court does not find any new,

good or sufficient ground so as to enlarge the applicant on bail.

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

11. It is accordingly rejected."

6. Learned counsel for applicant submits that it has now come in evidence that the prosecutrix is a married lady. However, there is no evidence on record that the prosecutrix has obtained divorced from her first husband. She, therefore, submits that in view of aforementioned admitted fact, no criminal prosecution of applicant can be sustained for an offence under Section 376 IPC. In support of aforesaid submission, reliance is placed upon the judgment of Supreme Court in **XX XX Vs. State of M.P., (2024) 3 SCC 496**. She, therefore, submits that in view of aforesaid fact, which now stands crystallized on record, applicant is liable to be enlarged on bail during the pendency of trial.

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 08.07.2023. As such, he has undergone more than 2 years and 2 months of incarceration. The charge sheet/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. Learned counsel for applicant would thus submit that there being no such compelling circumstance warranting custodial arrest of applicant during the pendency of trial, therefore, by reason of law laid down by the Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373**, applicant is liable to be enlarged on bail during the pendency of trial. In case, applicant is enlarged on bail then in that eventuality, 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-opposite party-1 and Mr. Krishna Pratap Yadav, the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused and undergoing incarceration, 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.

9. Having heard, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, Mr. Krishna Pratap Yadav, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of accused and accusations made, this Court finds that the submissions urged by the learned counsel for application in support of this third application for bail as noted herein above are clearly borne out from the record. Furthermore, the same could not be dislodged by the learned A.G.A. for State and the learned counsel representing first informant at this stage. Therefore, irrespective of the objections raised by the learned A.G.A. for State and the learned counsel representing first informant in opposition to this third application for bail but without making any comments on the merits of case, this Court finds that applicant has made out a case for grant of bail.

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

11. Let the **applicant-Sandeep Chaudhary**, 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.

12. 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.

September 18, 2025
Vinay

(Rajeev Misra,J.)