

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 27694 of 2025

Applicant :- Anurag Alias Chhotu Bhartiya

Opposite Party :- State of U.P.

Counsel for Applicant :- Niraj Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Niraj Kumar Dwivedi, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This third application for bail has been filed by applicant-Anurag Alias Chhotu Bhartiya seeking his enlargement on bail in Case Crime No. 21 of 2023 under Sections 363, 376 I.P.C., Police Station-Karchhana, District-Prayagraj, during the pendency of trial i.e. Sessions Trial No. 2044 of 2023 (State Vs. Anurag Bhartiya) under Sections 363, 376, 504, 506 I.P.C., Police Station-Karchhana, District-Prayagraj, now pending in the Court of Additional District and Sessions Judge, F.T.C.-II, Prayagraj.

4. The first bail application of applicant was rejected by this Court by an order dated 18.09.2023 passed in Criminal Misc. Bail Application No. 38577 of 2023 (Anurag @ Chhotu Bhartiya Vs. State of U.P.). Subsequent to above, applicant filed his repeat application for bail, which was registered as Criminal Misc. Bail Application No. 17547 of 2024 (Anurag @ Chhotu Bhartiya Vs. State of U.P.). The aforesaid repeat application for bail filed by applicant also came to be rejected vide order dated 17.09.2024. For

ready reference, the order dated 17.09.2024 is reproduced herein-under:

"1. Compliance affidavit filed by the learned A.G.A. in Court today is taken on record.

2. Heard Mr. Niraj Kumar Dwivedi, the learned counsel for applicant and the learned A.G.A. for State.

3. Perused the record.

4. This repeat application for bail has been filed by applicant-Anurag @ Chhotu Bhartiya seeking his enlargement on bail in Case Crime No. 21 of 2023 under Sections 366, 376 I.P.C., Police Station-Karchhana, District-Prayagraj, during the pendency of trial i.e. Sessions Trial No. 2044 of 2023 (State Vs. Anurag @ Chhotu Bhartiya and others) under Sections 366, 376 I.P.C., Police Station-Karchhana, District-Prayagraj now pending in the Court of F.T.C.-II, Allahabad.

5. The first bail application of applicant was rejected by this Court by a detailed order dated 18.09.2023 passed in Criminal Misc. Bail Application No. 38577 of 2023 (Anurag @ Chhotu Bhartiya Vs. State of U.P.) For ready reference, the order dated 18.09.2023 is reproduced herein under:

"1. Heard Mr. Ziya Uddin, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Anurag @ Chhotu Bhartiya seeking his enlargement on bail in Case Crime No. 21 of 2023, under Sections 366, 376 IPC, Police Station-Karchhana, District-Prayagraj during the pendency of trial.

4. It transpires from the record that that in respect of an incident, which is alleged to have occurred on 16.01.2023, a delayed FIR dated 21.01.2023 was lodged by first informant-Smt. Sushma and was registered as Case Crime No. 21 of 2023, under Sections 363, 366 IPC, Police Station-Karchhana, District-Prayagraj. In the aforesaid FIR, 3 persons namely - (1) Anurag Bhartiya (applicant herein), (2) Guddi and (3) Ajay Bhartiya have been nominated as named accused.

5. The gravamen of the allegations made in the? FIR to the effect that named accused-Anurag @ Chhotu Bhartiya enticed away the daughter of the first informant on 16.01.2023 at around 07:00 PM. The other two accused are alleged to have conspired and co-operated in the commission of the said crime.

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 prosecutrix was recovered on 10.04.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161

Cr.P.C. Same is on record at page 26 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR. As per the aforesaid statement of the prosecutrix, she was deliberately kidnapped by named accused-Anurag and Ajay. The prosecutrix has further stated that aforesaid accused deliberately and forcibly dislodged her modesty. On account of above, the prosecutrix has come in family way and the age of the pregnancy was said to be 2 months. 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. with the modification that the role of maintaining deliberate and forceful physical relation with the prosecutrix was assigned to only one of the accused namely - Anurag @ Chhotu Bhartiya. However, the Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate sexual assault. However, with regard to the private part of the prosecutrix, the Doctor has opined as follows:-

"Hymen - torn"

7. Certain samples were taken from the body of the prosecutrix for pathological examination. As per the supplementary report, the result of the Urine Pregnancy Test of the prosecutrix was positive. As per the USG report of the prosecutrix, the prosecutrix was found to be in family way and the justifiable age of the fetus was said to be 6 weeks and 3 days. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. The prosecutrix, in her aforesaid statement, has disclosed her age as 19 years. She has however, rejoined her previous statement under Section 161 Cr.P.C.

8. During course of investigation, Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. On the basis of above and other material collected by the Investigating Officer, during course of investigation, he came to the conclusion that complicity of applicant-Anurag @ Chhotu Bhartiya in the crime in question is fully established. Accordingly, he submitted the charge sheet dated 27.04.2023 whereby applicant alone has been charge sheeted under Sections 366, 376 IPC whereas the other named accused were exculpated.

9. Learned counsel for applicant contends that though applicant is a named/charge sheeted accused yet he is liable to be enlarged on bail. Applicant is innocent. He has been falsely implicated in aforementioned case crime number. The prosecutrix is major. She is a willing and consenting party inasmuch as, no signs on her body were found by the Doctor, who conducted internal examination of the prosecutrix which may denote commission of deliberate and forceful sexual assault. It is thus urged that the medical opinion does not support the ocular version of the occurrence. According to the learned counsel for applicant, the applicant and the prosecutrix are related to each other as applicant is the brother of the Bhabhi of the prosecutrix. As such, false implication cannot be ruled out.

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 26.04.2023. As such, he has undergone more than 5 months of incarceration. 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. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, 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 trial.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named/charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The prosecutrix is a young girl whose modesty has been dislodged by the applicant. On account of the act of applicant, the prosecutrix has come in family way as is clearly established from the medical evidence on record. There is nothing on record up to this stage to infer the false or malicious prosecution of applicant in aforementioned case crime number. On account of act of applicant, the prosecutrix who is a young and innocent girl has come in family way. She has now lost social respect and security. He, therefore, submits that no sympathy be shown by this Court in favour of applicant.

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

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of applicant, accusations made coupled with the fact that the prosecutrix in her statements under Sections 161/164 Cr.P.C. has remain consistent qua the criminality of the present applicant in the crime in question, the medical evidence clearly supports the ocular version of the occurrence up to this stage, there is nothing on record on the basis of which, it can be inferred that the prosecution of the applicant in the crime in question is false or malicious, the applicant and the prosecutrix are related to each other inasmuch as, applicant is the brother of the Bhabhi of the prosecutrix, applicant is guilty of dislodging the pious relationship between the parties, on account of the act of applicant, the prosecutrix has lost social respect and security, there is nothing on record to dislodge the medical evidence that has emerged up to this stage, 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 ground to enlarge the applicant on bail.

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

15. It is accordingly rejected.

Order Date :- 18.9.2023 "

6. Learned counsel for applicant submits that the prosecutrix has solemnized marriage with another person. A categorical averment to that

effect has been made in paragraph 12 of the affidavit filed in support of this repeat application for bail. It was on account of above that this Court passed following order on the previous occasion i.e. 07.08.2024:-

"As prayed by the learned A.G.A., put up again, as fresh, on 28.08.2024. In the meantime, the learned A.G.A. shall obtain specific obstructions with regard to the averments made in paragraph 12 of the affidavit filed in support of this application for bail.

Order Date :- 7.8.2024. "

7. In compliance of above order dated 07.08.2024, the learned A.G.A. has filed a compliance affidavit in Court today. In paragraph 4 of the affidavit of compliance, it has been categorically averred that the prosecutrix has solemnized marriage with another person.

8. On the above premise, the learned counsel for applicant submits that no justifiable ground now exists so as to prolong the custodial arrest of applicant. As such, applicant is liable to be enlarged on bail.

9. 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 custody since 26.04.2023. As such he has undergone more than one year and four and a half months of incarceration. The police report (charge-sheet) 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 crystallised. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the cumulative strength of above, 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.

10. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that the ground urged by the learned counsel for applicant does not improve upon the case of present applicant. In view of above, no new, good or sufficient ground has emerged so as to enlarge the applicant on bail. As such, present repeat application for bail is liable to be rejected.

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

12. Having heard the learned counsel for applicant, the learned A.G.A. for State and 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. in opposition to this repeat application for bail could not be dislodged by the learned counsel for applicant with reference to the record, therefore irrespective of the submissions raised by the learned counsel for applicant in support of present repeat application for bail but without expressing any opinion on the merits of the case, this court finds that no new, good or sufficient ground has emerged so as to enlarge the applicant on bail.

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

14. It is accordingly rejected.

Order Date :- 17.9.2024 "

5. Accordingly, applicant has now approached this Court by means of this third application for bail.

6. Learned counsel for applicant contends that the prosecutrix has deposed before court below as P.W.-2. However, the prosecutrix in her deposition before court below has not supported the prosecution story as unfolded in the F.I.R. Apart from above, the first informant has also deposed before court below as P.W.-1. On the above premise, it is thus urged by the learned counsel for applicant that since the prosecutrix herself has not supported the prosecution story, therefore, no good or justifiable ground now exists so as to prolong the custodial arrest of applicant during the pendency of trial. Furthermore, once the depositions of the first informant and the prosecutrix have been recorded then in that eventuality it cannot be said that if the applicant is enlarged on bail, he shall either terrorize the witnesses or shall hamper the course of trial. On the above premise, it is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail during the pendency of trial.

7. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 26.04.2023. As such, he has undergone more than two years and almost 4 months of incarceration. The charge sheet/ police report in terms of Section 173 (2) Cr.P.C. has already been submitted by the Investigation Officer against applicant, therefore, the entire evidence sought to be relied upon by the

prosecution against applicant stands crystallized. Apart from above, the depositions of P.W.-1, the first informant and P.W.-2, the prosecutrix have also been recorded before court below wherein the prosecutrix has not supported the prosecution story. On the above premise, the learned counsel for applicant contends that in view of above, no such incriminating circumstance can now said to be existing on record warranting custodial arrest of applicant during the pendency of trial. It is thus urged by the learned counsel for applicant 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.

8. Per contra, the learned A.G.A. has vehemently opposed the present third application for bail. He submits that since the applicant is a named as well as charge sheeted accused and facing trial before court below, therefore, he does not deserve any indulgence by this Court. It is also submitted by the learned A.G.A. that since all the prosecution witnesses have not been examined, therefore, it is not desirable to enlarge the applicant on bail during the pendency of trial. However, the learned A.G.A. 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, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant this Court finds that it is admitted fact to the parties that the first informant and the prosecutrix have deposed before court below as P.W.-1 and P.W.-2, however, the prosecutrix in her deposition before court below has not supported

the F.I.R., once the prosecutrix herself has not supported the prosecution story then there does not appear to any good or justifiable ground to prolong the custodial arrest of applicant during the pendency of trial, furthermore, the learned A.G.A. could not point out any such incriminating circumstance from record warranting custodial arrest of applicant during the pendency of trial, could be pointed out by learned the A.G.A. from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of Apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 6), the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by learned A.G.A. in opposition to present third application for bail but without expressing any comment on the merits of the case, this court finds that applicant has made out a case for bail.

10. Accordingly, present third application for bail is **allowed**.

11. Let the applicant-**Anurag Alias Chhotu Bhartiya** involved in aforesaid case crime number be released on bail 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner

whatsoever.

12. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison.

Order Date :- 21.8.2025

YK