

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 17906 of 2021

Applicant :- Imran

Opposite Party :- State Of U.P

Counsel for Applicant :- Anwar Hussain

Counsel for Opposite Party :- G.A.,Rajesh Yadav

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard learned counsel for the applicant, Shri. Rajesh Yadav, learned counsel for the first informant and learned A.G.A. through video conferencing and perused the record.

2. The applicant has approached this Court by way of filing the present Criminal Misc. Bail Application seeking enlargement on bail in Case Crime No.30 of 2021, under Sections 452, 377 and 506 of I.P.C., Police Station-Ramgarh, District-Firozabad after rejection of his Bail Application vide order dated 19.3.2021 passed by learned Additional Sessions Judge, Court No.1, Firozabad.

3. Learned counsel for the applicant argued that the applicant is a married person having one daughter and he drives Taxi. Allegedly, the victim who is a transgender used to hire his taxi for the purpose of visiting places and the applicant has been falsely implicated in the present case to extract money from him. There are applications on behalf of the victim as well as from the side of wife of the applicant before the concerned court for lodging F.I.Rs. against each other which are still pending. It is further submitted that the present F.I.Rs. are counterblast to the said applications. The applicant has no other reported criminal antecedent and he is languishing in jail since 13.1.2021, there is no likelihood of early disposal of trial and the applicant undertakes that if enlarged on bail, he will never misuse his liberty and will co-operate in the trial.

4. Learned counsel for the first informant and the A.G.A. have vehemently opposed the bail application. They have relied upon the statement of the victim recorded under Section 164 Cr.P.C. to submit that the first informant was victimised and was indulged in sexual relationship forcefully. However, he has not disputed that initially for two years the applicant and the victim were in consensual relationship.

5. Law on bail is well settled that 'Bail is rule and jail is

exception'. Bail should not be granted or rejected in a mechanical manner as it concerns liberty of a person. At the time of considering an application for bail, the Court must take into account certain factors such as existence of a prima facie case against the accused, gravity of the allegations, severity of punishment, position and status of the accused, likelihood of the accused fleeing from justice and repeating the offence, reasonable apprehension of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court while considering an application for bail must not go into deep into merits of the matter such as question of credibility and reliability of prosecution witnesses which can only be tested during the trial. Even ground of parity is one of the above mentioned aspects which are essentially required to be considered. It is also well settled that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner, compassionately and not in whimsical manner. The Court should record the reasons which have weighed with the court for the exercise of its discretionary power for an order granting or rejecting bail. Conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory. The Court while granting bail in the cases involving sexual offence against a woman should not mandate bail conditions, which is/are against the mandate of "fair justice" to victim such as to make any form of compromise or marriage with the accused etc. and shall take into consideration the directions passed by Supreme Court in *Aparna Bhat and others Vs. State of Madhya Pradesh and another*, 2021 SCC Online SC 230, in this regard.

6. Considering the rival submission, material available on record, the period of detention already undergone, the unlikelihood of early conclusion of trial, absence of any convincing material to indicate the possibility of tampering with the evidence, relevant factors mentioned above, particularly that prima-facie the applicant and the victim were in consensual relationship for a period of two years and that there are applications for lodging F.I.Rs. against each other and further prima-facie there is a dispute for exchange of money and also considering that the applicant is in jail since 13.1.2021 and the prevailing situation due to Covid-19 Pandemic, a case of bail is made out.

7. Let the applicant **Imran**, involved in aforesaid case crime number be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

(ii) The 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) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(v) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

8. 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 and send the applicant to prison.

9. The bail application is **allowed**.

10. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad.

11. The computer generated copy of such order shall be self attested by the counsel of the party concerned.

12. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

13. The observations made hereinabove are only for the purpose of adjudicating the present bail application.

Order Date :- 18.5.2021

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