

Neutral Citation No. - 2024:AHC:117849

Court No. - 68

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 24630 of 2024

Applicant :- Ravindra Singh Rathaur

Opposite Party :- State of U.P.

Counsel for Applicant :- Sandeep Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. Heard Sri Sandeep Mishra, learned counsel for the applicant and Sri Amit Kumar, learned A.G.A. for the State and perused the material available on record.

2. Applicant seeks bail in **Case Crime No. 63** of 2024, **under Sections 328, 376, 323, 344, 354-C, 384, 504, 506** of I.P.C., **Police Station - Dadri, District - Gautam Buddha Nagar**, during the pendency of trial.

Prosecution Story:

3. The applicant is stated to have entered into corporeal relationship with the informant and had even performed fake marriage with her in the year 2022. The applicant is also stated to have concealed the fact that he already had two siblings from his first marriage.

4. It is alleged that the informant had earlier instituted the FIR No.474 of 2022, u/s 366 of IPC against him in which police filed a closure report on account of her own statement recorded u/s 164 Cr.P.C. The applicant is stated to have rendered the informant intoxicated and thereafter her statement has been recorded by the Magistrate. The applicant is even stated to have filed a habeas corpus Writ Petition No. 517 of 2023 before this Court although the same was dismissed.

5. The applicant had threatened the informant to make the indecent videos of her viral which he is stated to have recorded.

Arguments on behalf of applicant:

6. The applicant has been falsely implicated in the present case due to ulterior motive. He has nothing to do with the said offence as alleged in the FIR. The FIR is delayed as it has been instituted after moving an application u/s 156(3) Cr.P.C. by the informant.

7. It is stated that the victim in her statement recorded u/s 164 Cr.P.C. has stated that she was under the influence of drugs at the behest of the applicant and has

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wrongly deposed before the Magistrate u/s 164 Cr.P.C. earlier on, as such, the said statement cannot be relied on. It is argued that the Magistrate is not an interested person and he would never record the statement of an intoxicated person.

8. As per the statement of the victim, she is major being 22 years of age, as such, at the time of offence, she was 20 years of age. The victim is a consenting party. It is further stated that earlier FIR was also found false by the police although the closure report is yet to be accepted.

9. The applicant has no other criminal history except the two FIR instituted by the same informant. There is no medical report to corroborate the prosecution story.

10. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length.

11. The applicant is languishing in jail since 28.02.2024, having no previous criminal history to his credit, deserves to be released on bail. In case, the applicant is released on bail, he will not misuse the liberty of bail and shall cooperate with trial.

Arguments on behalf of State:

12. The bail application has been opposed on the ground that the applicant had rendered the victim unconscious by putting his handkerchief soaked with chloroform on her nose and has committed the said offence although he could not dispute the fact that except two FIRs instituted by the same informant, there are no other criminal history of the applicant.

Conclusion:

13. As far as the fact of rendering a person unconscious by putting a handkerchief on her face is concerned, in the Modi's Medical Jurisprudence & Toxicology, Twenty-Second Edition (Student Edition) at page 511, it is observed as:

*"..... Concerning the administration of an anaesthetic drug, such as chloroform, it must be remembered that it is impossible to anaesthetise a woman against her will while she is awake. Even a skilled anaesthetist requires the help of one or two assistants to hold a patient forcibly down on the operating table during the first stage of anaesthesia, although the patient voluntarily inhales it for an operation. **It is also impossible for an inexperienced man to anaesthetise a sleeping person without disturbance, so as to substitute artificial sleep for natural sleep. Hence the story often published in the lay press of a woman having been rendered suddenly unconscious by a handkerchief soaked in chloroform held over her face and then raped is not to be believed.** It must be borne in mind that a woman, especially of an excitable and emotional temperament, during the stage of anaesthesia, might get a dream or hallucination*

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that she has been raped, and may insist on the belief after the effects of anaesthesia have passed off, so that she brings an accusation of violation against her medical attendant."

14. The well-known principle of "*Presumption of Innocence Unless Proven Guilty*," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because the person is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable. The said principle has been reiterated by the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and Ors., 2022 (10) SCC 51***. Learned AGA could not bring forth any exceptional circumstances which would warrant denial of bail to the applicant.

15. It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown by learned AGA.

16. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial, complicity of accused, severity of punishment and also considering the opinion expressed in the book of Modi's Medical Jurisprudence & Toxicology and the age of the victim coupled by the fact that there is no injury to corroborate the prosecution story, at this stage, without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is **allowed**.

17. Let the applicant- **Ravindra Singh Rathaur**, who is involved in aforementioned case crime 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 subject to following conditions. Further, before issuing the release order, the sureties be verified.

- (i) The applicant shall not tamper with evidence.
- (ii) 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.

18. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

19. It is made clear that observations made in granting bail to the applicant shall

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not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date:- 24.7.2024

Siddhant

(Justice Krishan Pahal)