

A.F.R.

Court No. 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 23551 of 2023

Applicant :- Vivek Kumar Maurya

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Om Narayan Pandey

Counsel for Opposite Party :- G.A.,Lakshman Tripathi

Hon'ble Siddharth,J.

1. Heard learned counsel for the applicant; Shri Lakshman Tripathi, learned counsel for the informant and learned A.G.A.
2. The instant bail application has been filed on behalf of the applicant, **Vivek Kumar Maurya**, with a prayer to release him on bail in Case Crime No. 143 of 2020, under Sections 363, 366, 376, 323, 504, 506, 354, 354-A IPC and 3/4 POCSO Act Police Station Sarnath, District-Varanasi, during pendency of trial.
3. There are allegations of abduction of minor girl with intent to marry, commission of offence of rape, beating, threatening, outraging her modesty, sexual harassment and penetrative sexual assault against the applicant.
4. There is allegation in the First Information Report that prosecutrix, resident of Varanasi, was made to enter into physical relationship with applicant for about one year on false promise of marriage, when she was student of B.SC., Part-1. Whenever prosecutrix talked to applicant about their marriage he used to avoid her request. On

3.5.2019, when prosecutrix was going to college, applicant enticed her from the way at 7 a.m in the morning and took her to Delhi at his aunt's place where he made physical relationship with her. Father of the prosecutrix gave an application at the police station on 4.5.2019 about her abduction by applicant. Thereafter the father and mother of the applicant pressurised the father and mother of prosecutrix and they threatened them of life in case they made any statement before the police against their son, the applicant. Therefore, father of prosecutrix withdrew the complaint made to the police on 7.5.2019 and prosecutrix was dropped back to her house by the applicant and co-accused persons, but the activities of the applicant did not change. Again whenever there was no one in the house of the prosecutrix applicant used to come and make physical relationship with prosecutrix by extending false promise of marriage. On 27.8.2019 at 8 a.m applicant took the prosecutrix to the registrar and got their marriage registered. Thereafter he took the prosecutrix to Lucknow where he made physical relationship with her. After four days he again made physical relationship with prosecutrix and brought her to a *dharamshala* in Mugalsarai and repeated the same act. Next day he took her to a room situated in Lanka, Varanasi; then to house of his *Mama* at Maduwadeeh where he repeated the same offence against her. At her *Mama's* place he compelled her to make physical relationship with his cousin (*Mamas'* son) also. When the aforesaid son of his *Mama* touched her inappropriately she raised alarm, thereafter applicant and son of his *mama*

abused and beaten her. Applicant stated that he has married her only to physical enjoyment. Thereafter applicant asked her to go away otherwise she will be killed by giving her poison. Applicant called his father, uncle and brother, who are co-accused, and all of them abused her and sexually molested her. They beaten her and dropped her in injured condition on the road at 11 p.m on 5.9.2019. The passers-by helped her and she called her mother and she took her to her house. Thereafter she was treated at home by her mother by home made medicines. On 6.9.2019 accused persons came again to her house and threatened the prosecutrix and her family of life, if she makes any complaint to the police. On 18.2.2020 again co-accused persons came to her house and abused her and asked her family to leave their village and go away. Thereafter the First Information Report was lodged on 9.3.2020 with regard to the incident dated 3.5.2019 by the prosecutrix herself.

5. Learned counsel for the applicant has submitted that in the statement of the prosecutrix recorded under section 164 Cr.P.C., she herself has claimed that she is aged about 19 years and student of B.Sc. Part-I. Therefore implication of the applicant under section 3/4 POCSO Act was falsely made by the police. She admitted that she had affair with applicant for the last one year. Applicant asked her to leave her house to marry him. She left her house and went to Delhi and then went to the house of applicant's aunt where she entered into physical relationship with applicant with consent. Thereafter her family members

came and took her back. Applicant called her to *Kutchery* for the purpose of marriage. Thereafter, applicant took her to Lucknow and then to Mugalshari and then they returned to Varanasi. She was confined by her parents against her wishes. Thereafter dispute took place between family members of both and the prosecutrix parted ways with the applicant and First Information Report was lodged.

6. Learned counsel for the applicant has pointed out to the marriage registration certificate of the applicant and prosecutrix which shows that their court marriage was solemnized on 11.8.2019. The prosecutrix has lodged First Information Report against the applicant only to falsely implicate him. She is wife of applicant and without seeking divorce, she has indulged in filing of First Information Report on false allegations concealing correct facts. Applicant has filed application under section 9 of the Hindu Marriage Act in the year 2019 for reinstatement of conjugal rights against the prosecutrix. He is in jail since 16.1.2023 and has no criminal history.

7. Learned counsel for the informant has submitted that prosecutrix was minor at the time of incident. Her date of birth is 10.7.2001, the incident initially took place on 3.5.2019. The seriousness of allegations and repeated commission of offences of rape on false promise of marriage does not entitles the applicant for grant of bail. He has ruined the life of an innocent and helpless girl.

8. Learned A.G.A. too has opposed the prayer of the applicant for grant of bail but could not dispute the aforesaid facts.

9. After hearing the submissions of learned counsel for the parties, it appears that First Information Report has been lodged on the basis of false allegations and incorrect facts. The prosecutrix has not fully supported the allegations made in the First Information Report in her statement recorded under section 164 Cr.P.C. The allegation regarding the offences committed by cousin of applicant (*Mama's* son) is missing in her statement. New allegation has been made that the co-accused family members of applicant compelled her to make signatures on blank paper. The marriage of the prosecutrix and applicant was registered. No divorce, dissolution of marriage or judicial separation of couple through court has taken place.

10. This court finds that large number of cases are coming in courts wherein girls and women take undue advantage by lodging First Information Report on false allegations after indulging in long physical relationship with the accused. The time has come that courts should be very cautious in considering such bail applications. The law is heavily biased against males. It is very easy to make any wild allegations in First Information Report and implicate anyone on such allegations as in the present case.

11. First Information Reports are lodged invariably after due consultation with expert incorporating all the necessary ingredients required for making out a clear case for implication under different provisions of law. First Information Reports are not being lodged under section

154(1) Cr.P.C., by directly giving information to officer incharge of police station orally. Section goes as under -

“154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.

(3) ”

12. The lodging of the FIR is being done invariably by giving a written application at the police station which is always fraught with danger of the false implication like in the present case. Such applications are drafted by experts in courts or the *Munshi*/Head clerk in police station. The experts are aware of the ingredients of each and every provisions of penal law. They incorporate the allegations in such a way so that accused may not be able to get even bail easily and early. Just a cursory glance at allegations made in the First Information Report is sufficient for the court to throw the file, without any application of mind further. The State of affairs has gained alarming proportion. An honestly written First Information Report is

very short and is shorn of any unnecessary and false allegation. This is the test, but it is seldom realised.

13. The culture of openness being spread by social media, movies, T.V. shows, etc., is being imitated by adolescent/young boys and girls but when their conduct comes in conflict with Indian social and family norms and it comes to protecting the honour of the family of the girl and the honour of girl, such maliciously false First Information Reports are lodged. Such First Information Reports are also lodged when after living in live-in-relationship for sometime/long time, dispute takes place between the boy and girl on any issue. Nature of partner unfolds before the other partner with time and then when they realize that their relationship cannot continue for life, trouble starts. Since girls/women have upper hand when it comes to protection of law, they succeed easily in implicating a boy or man in the case like of the present nature. The traditional perception of such crimes has become irrelevant. The effect of social media, movies, etc., in raising the awareness level of adolescents and loss of innocence at comparatively younger age is clearly discernible. The traditional presumption of innocence has given way to an untimely loss of innocence resulting in unforeseen deviant behaviour of adolescents which the law never contemplated earlier. Law is dynamic concept and it requires a re-look in such matters very drastically.

14. This court is finding that genuine cases of such sexual offences are now exception. The general rule is of false implication in cases of sexual offences. Implication in case

of sexual offence is a sure shot way of punishment before trial. Bails are normally not granted easily and early. In cases where implication is made under POCSO Act situation become worse. Incarceration of accused in jail for few months or for years is certain. Training of judicial officers in their training institute is still in line with the old concept of bail in cases of sexual offences. The treating of all the wild allegation in F.I.R as gospel truth without keeping eye on the ground realities is causing lots of injustice.

15. The courts and judges are part of the society. What is happening in society should always be kept in mind while applying law. Wherever an offence takes place, the expert (mostly lawyer in district court or *munshi* / head clerk of police station) is consulted. He enquires about the family members of an accused, his influential friends and well-wishers, local and also stationed outside. He also enquires whether the informant side has enmity with someone or with whom it wants to settle score. Then the expert implicates all those with whom the informant/complainant has other grievances, not connected the offence being complained whatsoever, since the lodging of complaint / F.I.R against all enemies in one stroke is encashed as an opportunity. Their roles are so meticulously shown in the F.I.R that even the most experienced of the judges falter. For the courts at district level, it is quite hazardous to grant bail in matters of such serious and meticulously made allegations because of fear of disciplinary proceedings by the higher courts. This is one of the

reasons why the district courts refuse to grant even bail, not to say about granting of acquittal in most of the cases only because of the seriousness of allegations. Whether allegations are prima facie credible or are proved or not is not very relevant at their level. They just get rid themselves of such cases by refusing to grant relief, which is also part of their training at the very threshold of joining of their service in their training institute. This is how the injustice gets perpetrated because of the role of expert who drafts the F.I.R / complaint. In case the honest statement of complainant / informant is recorded in writing by the officer-in-charge of the police station soon after the incident and the role of expert get excluded in lodging of report, cases of false implication will come down.

16. Now coming back to the present case this court finds that main allegation in the opening part of the First Information Report is regarding entering of applicant in physical relationship with prosecutrix on false promise of marriage. This allegation stands falsified when in the later part of the FIR the prosecutrix admitted that the applicant entered into court marriage with her.

17. Thereafter fresh allegation levelled by prosecutrix in First Information Report is that when the applicant took her to his *Mama's* house he asked the prosecutrix to enter into physical relationship with his *mama's* son also. He stated that he has married her only for physical enjoyment, but this allegation is missing in the statement of prosecutrix recorded as under Section 164 Cr.P.C.

18. The conduct of the prosecutrix of repeatedly eloping from her parental home with applicant and going to Delhi, Lucknow, Mughalsarai and to the places of relatives of the applicant shows that she was a consenting party all through. After court marriage the applicant took her to the places of his relatives for social acceptance of their marriage but thereafter something went wrong between them which led to the implication of applicant in this case.

19. At all the places where the applicant took the prosecutrix she admits entering into physical relationship with the applicant without any element of coercion before and after her court marriage, therefore her consent was not covered under Section 90 of IPC, nor physical relationship made by applicant with prosecutrix will come under the definition of rape as per Section 375 IPC. Here, the promise of marriage forming basis of physical relationship between couple was honoured by applicant, which is admitted in FIR itself .

20. The allegations of her physical torture are not supported by any medical report. In the FIR it is alleged that the injuries of prosecutrix were treated by her mother at home. This also proves the meticulous drafting of FIR by an expert. There cannot be any evidence of treatment of home, but to justify implication under Section 323 IPC such an allegation was made.

21. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the

applicant; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in *the* recent judgment dated 11.07.2022 of the Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and 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

21. Let the applicant 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.

1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

2. The applicant shall cooperate in the trial sincerely without seeking any adjournment.

3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

4. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and 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 to ensure presence of the applicant.

6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law.

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

Order Date :- 27.7.2023

Atul kr. sri.