

Court No. - 1

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40122 of 2019

Applicant :- Atul Kumar Singh @ Atul Kumar Rai

Opposite Party :- State of U.P.

Counsel for Applicant :- Swetashwa Agarwal

Counsel for Opposite Party :- G.A., Sudist Kumar

Hon'ble Ramesh Sinha, J.

1. Today, a personal affidavit of S.S.P. Varanasi has been filed by learned A.G.A. and supplementary counter affidavit has been filed on behalf of the complainant which are taken on record.

2. Heard Sri Dilip Kumar, learned Senior Advocate assisted by Sri Swetashwa Agarwal, learned counsel for the applicant, Sri Vinay Saran, learned Senior Advocate assisted by Sri Sudist Kumar, learned counsel for the complainant, Sri A.R. Chaurasia, learned Standing Counsel for the State and perused the record.

3. The pleadings between the parties have been exchanged.

4. Learned counsel for the applicant submits that the applicant is a Member of Parliament from Ghosi constituency of district Mau as a joint candidate of B.S.P. & S.P. political parties. He has defeated his rival candidate, who belongs to ruling party of the State. He submits that the present case has been lodged against the applicant by the complainant/prosecutrix on account of political influence. He has tried to demonstrate from the record regarding the false implication of the applicant due to political motive by his rival candidate of the ruling party, who lost the election against him. The present F.I.R. was lodged by the complainant/prosecutrix

after an inordinate delay on 1.5.2019 whereas the incident in question has taken place on 7.3.2018 for which there is no explanation given by the complainant/prosecutrix. He submits that as soon as the notification for Parliamentary Election was done on 20.4.2019, the applicant on 25.4.2019 filed his nomination as a joint candidate of B.S.P. and S.P. coalition for contesting the Parliamentary Election of 2019 from Ghosi constituency of district Mau U.P. Immediately thereafter on 28.4.2019, a video clip against the applicant was floated by the victim in social media for sexual exploitation etc. The last date of filing of nomination was 29.4.2019. When the applicant made his nomination as a joint candidate of B.S.P. and S.P. coalition then the applicant was being pressurized by the ruling party through his earlier companion of B.S.P., namely, Sushil Kumar, who later on had joined the ruling party to withdraw his nomination before the last date of withdrawal of nomination, i.e., 2.5.2019 but he refused to do so then he was being harassed by the ruling party to ruin the election campaign and political image of the applicant a deep rooted conspiracy was hatched by the high ups of the ruling party in collusion with the police and the complainant/prosecutrix falsely implicated the applicant in the present case. In this regard on 11.5.2019 a temporary look out circular was issued by the Bureau of immigration and Ministry of Home Affairs. He pointed out that on 1.5.2019, the complainant/prosecutrix met the D.G.P. U.P. and Chief Secretary of the State of U.P. at Lucknow raising her grievance against the applicant in pursuance of which the F.I.R. of the present case was lodged against the applicant on 1.5.2019 at 22:50 p.m. at police station Lanka, District Varanasi. On 2.5.2019, the statement of the

complainant/prosecutrix under section 161 Cr.P.C. was recorded and on the same day her statement under section 164 Cr.P.C. was also recorded. On 2.5.2019, her medical report was also prepared along with pathology report and supplementary medical report was also prepared on 8.5.2019. He submits that the complainant/prosecutrix is admittedly a major girl aged about 21-22 years as is evident from the report of her ossification test conducted on 7.5.2019. He pointed out that though the allegation of rape has been levelled by the complainant/prosecutrix against the applicant but the same does not corroborate by her medical examination report as no injury was found either on internal or external part of her body. He submits that the complainant/prosecutrix was used by the rivalries of the applicant for implicating him in the present case just to malign his image before the public so that he could not contest the election but the applicant contested the election against the rival candidate of the ruling party and has won from his constituency and has been elected by thumbing vote. He submits that the complainant/prosecutrix is not an innocent lady. She is a student leader and has been in habit of implicating innocent person and black mailing them for her ulterior motive. In past also, she has implicated innocent persons and after taking money from them, the cases were dropped against them. He submits that so far as the criminal antecedents of the applicant are concerned, there appears to be only 12 cases pending against him though the complainant/prosecutrix has stated that the applicant has a criminal history of 32 cases pending against him. He submits that from a perusal of the chart filed along with personal affidavit filed today by the S.S.P. in the Court it is apparent that

there were 21 cases shown against the applicant out of which in 8 cases he has been acquitted and in one case final report has been submitted and there remains only 12 cases pending against him. He further submits that there was case which was registered as case crime no. 9 of 2009 for the offence under sections 342, 386, 504, 506, 427 I.P.C. against the applicant which was lodged by one Sushil Kumar, who was the then M.L.A. and the applicant also lodged an F.I.R. against him for similar offences. It was pointed out by him that so far as case crime nos. 396 of 2011 for the offence under sections 364, 302, 120B I.P.C., police station Cantt., District Varanasi, case crime no. 397 of 2011 under sections 307, 353, 333, 338, 224, 225, 419, 120B I.P.C. and 7 C.L.A. Act, police station Cantt., District Varanasi, twice he was challaned under the Gangster Act on the basis of the said cases for which case crime no. 356 of 2011 under sections 3 (1) U.P. Gangster Act, police station Cantt., District Varanasi, case crime no. 511 of 2011 under sections 3 (1) U.P. Gangster Act, police station Cantt., District Varanasi respectively was registered against him. He submits that the cases registered as case crime nos. 396 of 2011, 397 of 2011, 401 of 2011 referred above, the applicant was not named in the F.I.R. and his name was introduced subsequently and he is on bail in the said cases. Moreover under the Gangster Act also he has been granted bail. The other cases are old and stale. So far as his non appearance before the trial court is concerned, he submits that the applicant is already confined in jail and he cannot be held responsible for delaying the trial or framing of charges in the present case as the State has acted mischievously against the applicant and not sending the proper notice to the jail authorities concerned for his appearance before the trial

court. He further submitted that the letter which has been addressed to Hon'ble the Chief Justice of India sent by the complainant/victim was with respect to her grievance that the present case was being tried at Varanasi whereas the same ought to have been transferred to the Court of M.P. M.L.A. at district Allahabad. He next submitted that the S.S.P. Varanasi has addressed a letter to the complainant/prosecutrix that if she had any apprehension of her life or receiving any threatening, she may approach him so that necessary security may be provided to her but she had not appeared before the S.S.P. for the same on account of which she has not been provided any security and she is moving freely, hence he prayed that the applicant be released on bail as he is languishing in jail since 22.6.2019. He has placed reliance on the judgment of the Apex Court in the case of ***Maulana Mohammad Amir Rashadi vs. State of Uttar Pradesh and another reported in (2012) 2 SCC 382*** that criminal antecedent cannot be the sole ground for rejecting the bail application of the accused and has drawn the attention of the Court towards para-10 of the said judgment which is quoted hereinbelow:-

"10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc. "

5. He has further relied upon the judgment of the Apex Court in the case of ***Ketan Suresh Pawar and another vs. Yuvraj Sandeepan Sawant and another reported in 2019 SCC***

Online SC 1103 and drawn the attention of the Court towards para-9 of the said judgment which is quoted hereinbelow:-

"9. The learned counsel for the petitioners has placed reliance on the judgment of this Court in the case of Chandrakeshwar Prasad @ Chandu Babu & Anr. vs. State of Bihar & Ors. (2016) 9 SCC 443 to contend that in the said case it was held that the High Court had erred in granting bail to the respondent accused therein without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue. In the said case it is noticed that the F.I.R. had indicated that the accused is a habitual offender and he had already been awarded two sentences of life imprisonment and also named in several criminal cases. The accused therein was also a category-A history sheeter in view of his persistent criminal antecedents. In that background in the case which was being dealt with and the bail was under consideration, he had been charged with the offence of facilitating the murder of a witness in a case in which he was being tried. In that background, having considered all aspects this Court had arrived at such conclusion. Needless to mention, in a matter SLP(Crl) No.4158/2019 relating to consideration of a bail application the facts of each case will have to be weighed on its own merits keeping in view the principles for grant of bail, while exercising the discretion available to the Court. In that background, in the instant case, for the reasons stated above the discretion as exercised by the High Court cannot be termed as erroneous. "

6. *Per contra*, learned counsel for the complainant has vehemently opposed the arguments of learned counsel for the applicant and has submitted that the complainant/prosecutrix of the case has been sexually exploited by the applicant for his ulterior motive from time to time and further committed rape on her after calling on his flat at Varanasi and she because of the status and criminal antecedents of the applicant, could not dare to speak against him and when she came to know that the applicant was going to contest the election of Parliament then she gathered strength to highlight his illegal activities and immoral conduct before the public. He submitted that on account of fear and threatening of her life the

complainant/prosecutrix also could not made effort to lodge the F.I.R. or complaint against the applicant at earlier point of time. He next submitted that the applicant is a history-sheeter and has been put in category 'A' being History-sheet No. 27A which is pending against him at police station Madhuadeeh, district Varanasi. The applicant is having a long criminal history of 32 cases. He submitted that though the applicant has alleged 12 cases against him as has been also pointed out by the S.S.P. in his personal affidavit filed today. He the two cases earlier the applicant faced trial which ended in his acquittal as the witnesses turned hostile. He submits that the fact that as on date 12 cases are pending against the applicant goes to show that the applicant does not have a good reputation in the society. He submits that if the applicant is enlarged on bail then there is every likelihood that he would indulge in tempering with the evidence and not allow the complainant/prosecutrix to appear before the trial court to depose against him. He submitted that the trial court has fixed the date for framing of charge on number of occasions but the applicant did not appear before the trial court and had avoided framing of charges against him, hence his bail application deserves to be rejected. He has relied upon a judgment of the Apex Court in the case of ***Mauji Ram vs. State of U.P. and another reported in 2019 LawSuit (SC) 1378*** and drawn the attention of the Court towards para-15 of the said judgment which is quoted hereinbelow:-

"15. Having perused the FIR and keeping in view the antecedents of the accused persons which are brought on record by the State in their counter affidavit and further keeping in view the manner in which the offence under Section 302 IPC was committed, we are prima facie of the view that this is not a fit case for grant of bail to the accused

persons (respondent No.2 herein in all the appeals). These factors were relevant while considering the bail application and, in our view, they were not taken into consideration. "

7. He has further relied upon a judgment of the Apex Court in the case of ***Neeru Yadav vs. State of U.P. and another reported in (2014) 16 SCC 508*** on the point of criminal antecedents of the accused is also a guiding factor which has to be considered by the Court while considering the bail application of the accused and has drawn the attention of the Court towards para-18 of the said judgment which is quoted hereinbelow:-

"First, we shall dwell upon the criminal antecedents. The appellant, the real victim, being the wife of the deceased, has annexed a chart relating to the criminal history of the accused. The State has filed a counter affidavit. We think it apt to refer to the cases which find place in the counter affidavit filed by the state. Be it clarified though it has been filed as a counter affidavit, it is not in oppugnation of the prayer sought in the petition. On the contrary, it is supportive of the stand put forth in the petition. It has been asseverated that the respondent no.2 is a history-sheeter and number of cases have been lodged against him.....,,"

In the reply filed by the respondent no.2 contended, inter alia, that he has been acquitted in certain case. However, in the course of hearing, we have been apprised that most of the cases instituted against the respondent no.2 are still pending and some of them are under Section 302 IPC and other heinous offences."

8. He further submitted that the applicant is an elected member of Parliament and has tried to linger on the trial. The complainant/prosecutrix had also approached Hon'ble The Chief Justice of India and sent an application/representation vide speed post on 9.8.2019 raising her grievance and further praying for protection of herself and her family members and the S.S.P. has further provided her security as she apprehending some threatening from the applicant in the present case.

9. After having heard learned counsel for the parties and considering the rival submissions advanced by learned counsel for the parties, I am of the opinion that the case is fixed for framing of charge and statement of the complainant/prosecutrix is to be recorded by the trial court. Taking into account the facts and circumstances of the case in order to ensure the fair and speedy trial it would be more appropriate at this stage that the trial court would be allowed to frame charges and record the statement of the complainant/prosecutrix expeditiously.

10. Without expressing any opinion on the merits of the case and considering the submissions advanced, I find no good ground for grant of bail to the applicant Atul Kumar Singh @ Atul Kumar Rai involved in Case Crime No. 548 of 2019 under sections 420, 376, 504, 506 I.P.C., police station Lanka, District Varanasi.

11. Accordingly, the bail application of the applicant is **rejected** at this stage.

12. However, the trial court is directed to frame the charges against the applicant in accordance with law on the next date fixed and further record the statement of the complainant/prosecutrix expeditiously preferably within a period of two months from the date of framing of charge.

Order Date :- 15.11.2019
Shiraz