

(2013) 02 AHC CK 0287

Allahabad High Court

Case No: Criminal M.B.A. No. 23118 of 2011

Purushottam Naresh Dwivedi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 20, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 439
- Penal Code, 1860 (IPC) - Section 147, 323, 343, 354, 376

Citation: (2013) 2 ACR 2011 : (2013) 81 ALLCC 274

Hon'ble Judges: Sunil Hali, J

Bench: Single Bench

Advocate: Ajatshatru Pandey, J.P. Tripathi, Lav Srivastava, Nitin Chandra Mishra, R.P. Dubey and G.S. Chaturvedi, for the Appellant; R.P. Pandey and N. I. Zafri, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Hali, J.

Personal liberty is the right to act without interference within the limits of the law. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes, like in the present case, do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which is the demand of a civilized society. This is an application for granting bail on behalf of accused applicant who is involved in Case Crime No. 6 of 2011, under Sections 147, 376, 354, 323, 343, 504

and 506, I.P.C. which was registered at P.S. Atarra, District Banda on 12.1.2011. The case was transferred to the C.B.C.I.D. by the Govt. of U.P. vide order dated 13.1.2011. It appears that the investigation of the case was transferred to C.B.I. vide order dated 12.9.2011 by the Hon"ble Apex Court and initially the proceedings of the said case before the trial court was stayed.

2. Investigation by the C.B.I. reveals that the accused namely Purushottam Nath Dwivedi the then M.L.A. had employed the prosecutrix K.M. Sheelu as a maid in his house. Allegations levelled against the accused are that while she was employed in his house, she was raped by the present applicant in the intervening night of 11 and 12.12.2010 at his house. On 13.12.2010, accused again tried to rape her. She however, managed to escape from the house. She was intercepted by the henchmen of the accused M.L.A. namely Ram Naresh Dwivedi, Narendra Kumar Shukla, Raghuvansh Mani, Suresh Neta, Rajendra Shukla. In order to provide alibi an F.I.R. of theft was filed vide Case Crime No. 379 of 2010, u/s 381. I.P.C. at P.S. Atarra, District Banda against the prosecutrix on 14.12.2010. The said F.I.R. was filed at the behest of the son of the accused Sri Mayank Dwivedi. She was arrested by the, local police and the alleged stolen articles were said to have been recovered from her possession. On the same day she was produced before the Court from there she was sent to Judicial custody in District Jail Banda. Investigation in the case was conducted by the C.B.I. and closure report was filed as allegations of theft could not be substantiated against her.

3. Statement of the prosecutrix under Sections 161 and 164, Cr. P.C. was recorded. In her statement u/s 164, Cr. P.C. she has stated that the accused M.L.A. had known her father and he approached him to have her daughter employed as maid in his house and she came to the house of the accused on 8.12.2012. Accused asked her to marry with one of his servant namely Chiddi which offer was rejected by her. In her statement u/s 164, Cr. P.C. she has stated that the accused committed rape on her against her wishes as a result of which she started bleeding from her private parts. She, however, managed to escape. She has clearly narrated that the rape was committed by the accused against her wishes.

4. While reading the contents of Section 164, Cr. P.C. the following things clearly emerge that the accused had committed rape, after enticing the prosecutrix by giving her allurements of employment. He had suggested to the prosecutrix to marry his servant which offer was refused by her. Accused had told her that the marriage with his servant shall be a mere formality as this would provide him an opportunity to have sexual intercourse with her. She was raped by the accused as a result of which blood started oozing from her private parts. In order to create an alibi he falsely implicated the prosecutrix in a false case of theft as a result of which she was arrested and kept in judicial custody.

5. Circumstances which had appeared against the applicant prima facie makes out a case of rape of a harassed and helpless girl who was subjected to rape by a person

who was a sitting M.L.A. of the Ruling Party. Manner in which the accused tried to hush-up the matter is clearly visible from the fact that a false case of theft was registered against the prosecutrix which ultimately was found to be without any merit.

6. It appears from the statement of the prosecutrix that she was also threatened by the accused that she will be killed in case she makes noise while raping her.

7. The applicant was arrested in the case and he filed the bail application before the trial court which has been rejected, hence this application.

8. Heard learned counsel for the parties and perused the material on record.

9. The main question that emerges for consideration is as to whether the order passed by the court below is legitimately acceptable and legally sustainable within the ambit and sweep of the principles laid down by this Court for grant of regular bail u/s 439 of the Code.

10. Hon"ble Apex Court in [Ram Govind Upadhyay Vs. Sudarshan Singh and Others](#), , it has been observed that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. Heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the Court also referred to the decision in [Prahlaad Singh Bhati Vs. N.C.T. Delhi and Another](#), . and stated as follows:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

11. Hon"ble Apex Court in [Chaman Lal Vs. State of U.P. and Another](#), . while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are; (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the

complainant: and (iii) prima facie satisfaction of the court in support of the charge.

12. Hon"ble Apex Court in [Masroor Vs. State of U.P. and Another](#), . while giving emphasis for ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that there is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.

13. Further Hon"ble Apex Court in [Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another](#), . it has been observed that it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. Among other circumstances the factors which are to be borne in mind while considering an application for bail are whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail: character, behaviour, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced; and danger, of course, of justice being thwarted by grant of bail.

14. The authorities cited above has been relied solely for the purpose of reiterating conceptual principles, namely, factors that are to be taken into consideration while exercising power of admitting an accused to bail when offences are of serious nature. It is no doubt true that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasize, the sacrosanctity of liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to Rule of Law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights.

15. Applying the aforesaid principles opined by the Hon"ble Apex Court in various pronouncements cited above, it be seen that the allegations against the applicant as on today are of very serious in nature and the punishment provided is up to life imprisonment. Following circumstances, appear from the statement of the prosecutrix that she was enticed by the applicant to accept the job in his house on pretext of having sexual intercourse with her and on her refusal to marry with the servant of the accused, which was only an excuse to ensure physical presence of the prosecutrix in his house. Intention was to commit sexual intercourse with her. Rape

was committed against her consent by the applicant as a result of which blood started oozing from her private parts. When she resisted the attempt of the applicant to commit rape on her accused threatened to kill her in case she makes noise. In order to wash of the crime committed by him, the prosecutrix was falsely implicated in a case of theft by the accused M.L.A. who enjoyed a lot of influences in the administration. In his plea for bail the accused had stated that the present case of rape had been registered because of political motivations however, the range of offence, nature of crime, the individual liberty and social security, the concept of bail, the definition of crime and the duty of the court do not lend prima facie acceptance to the same.

16. Under these circumstances, will it be appropriate at this stage to grant bail to the accused more particularly when there are serious allegations which carry punishment up to life imprisonment.

17. Once the accused is released on bail, there is every possibility that he is likely to intimidate the prosecutrix on account of the status which he enjoys as former M.L.A. The manner in which he tried to hush up the crime committed by him and tried to falsely implicate the prosecutrix in a false case of theft is sufficient proof that the accused enjoys a lot of influence in the area. The concept of crime in the contextual sense of rape really need a sea change as this has really shattered the spine of the orderly society. It is almost nauseating to read almost every day about this type of criminal activities where the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. In these circumstances, I am not inclined to grant bail to the applicant. Application is hereby rejected, trial court is directed to proceed with the trial and record statement of the prosecutrix. Accused may, if so advised, file fresh bail. application after recording of the statement of the prosecutrix. Trial court shall consider his application on its merit keeping in view the fact that the punishment provided u/s 376, I.P.C. is up to life imprisonment. He will also take into consideration the other circumstances including the influence of the accused which he enjoys in the area and his capacity to intimidate the witnesses in this behalf.