

Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42757 of 2024

Applicant :- Manish Kumar Yadav

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashwani Tripathi, Om Prakash Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicant and Mr. Deepak Mishra, learned Additional Government Advocate representing the State.

2-By means of this application under Section 439 of Cr.P.C., applicant-Manish Kumar Yadav, who is involved in Case Crime No. 213 of 2024, under Sections 64, 332(b), 352, 351(3) B.N.S., Police Station Manduadeeh, District Varanasi seeks enlargement on bail during the pendency of trial.

3-As per prosecution case in brief, victim herself lodged a first information report on 04.10.2024 against the applicant and his friend for the offence under Sections 64, 332(b), 352 and 351(3) B.N.S. alleging inter-alia that she belongs to a vulnerable sections of society and is supporting her family by singing and dancing in an orchestra. The applicant, who is a man of criminal nature used to visit the place wherever she goes to perform in the orchestra party. On 09.09.2024 at about 09:00 PM, applicant came to her house in a drunken state and finding her alone, he started molesting her. The F.I.R. further alleges that when the victim raised alarm, the applicant and his friend ran away. Thereafter, the applicant made a call on her mobile phone and threatened her that if she informs the police about the said incident, he will rape and eliminate her. The F.I.R. also alleges that along with the applicant, there was another person who was making video on his

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mobile phone of the act done by the applicant. On 10.09.2024 at about 07:00 AM, applicant again called her and abused due to which she is very scared.

4-The main substratum of argument of learned counsel for the applicant is that the applicant has been falsely implicated in this case. In fact, applicant runs an orchestra, in which victim/complainant performs as a dancer. The complainant had borrowed Rs. 25,000/- from the applicant but she did not return and in order to escape from her liabilities, she lodged impugned F.I.R. against the applicant in order to settle her personal score. Lastly, it is submitted by the learned counsel for the applicant that the applicant is languishing in jail since 05.10.2024 and in case he is released on bail, he will not misuse the liberty of bail.

5-On the other hand, learned A.G.A. vehemently opposed the said submissions of learned counsel for the applicant by reiterating the prosecution case as mentioned in the F.I.R. He also contended that apart from this case, applicant has criminal history of following three cases :-

(i) Case Crime No. 220 of 2021, under Sections 323, 342, 363, 366, 376, 376D, 504, 506 I.P.C. and Sections 5G, 5L and 6 POCSO Act, Police Station Mirzamurad, District Varanasi.

(ii) Case Crime No. 0266 of 2018, under Sections 342, 392, 411 I.P.C., Police Station Mirzamurad, District Varanasi.

(iii) Case Crime No. 0137 of 2010, under Sections 41 and 109 Cr.P.C., Police Station Mirzamurad, District Varanasi.

6- It is next submitted by learned A.G.A. that the applicant is an organizer of the orchestra party, in which victim was engaged as a dancer. The act and

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conduct, as disclosed by the victim in the F.I.R. as well as in her statements under Section 180 and 183 BNSS, are heinous in nature, therefore, the bail application of the applicant is liable to be rejected.

7- Having heard the submissions of learned counsel for the parties and perusing the record, I find that the defence set up by the applicant as mentioned in paragraph No. 15 of the bail application as noted above, does not corroborate from any material on record. This Court is also of the view that the statement of the victim is a preliminary consideration for deciding the bail application. I also find that there is no contradiction in the F.I.R. version as well as in the statements under Section 180 and 183 BNSS of the victim to vitiate the prosecution case. At this stage, I do not find any good ground to presume that the statements of the victim are false. So far as the defence of the accused is concerned, same is a matter of trial which can be adjudicated by the trial court at the appropriate stage.

8- In **Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu and another**, (2012)9 SCC 446, Hon'ble Supreme Court, held as under:

"We may usefully state that when 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. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed."

9- Hon'ble Apex Court in the case of **Neeru Yadav Vs. State of U.P.**, (2015) 3 SCC 527, after referring a catena of judgement of Hon'ble Supreme Court on

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the consideration of factors for grant of bail, held as under:

"This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedent of the accused. What has weighed with the High Court is the doctrine of parity. A historysheeter involved in the nature of crimes which we have reproduced herein above, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner."

10-The aforesaid judgement has further been followed by the Apex Court in the case of **Sudha Singh Vs. State of U.P. and another**, 2021(4) SCC 781.

11- The orchestra is a group of performers including dancers and singers in musical settings providing live music for the events or parties. This Court is of the view that women artists, who use to perform as a singer or dancer in orchestra parties are also deserve respect and they have right to live with dignity. Unfortunately, many women artists often face exploitation and sexual harassment, because they are sometime seen with different mind set / perception in the society, which undermines their basic human right. In the case in hand involving the sexual exploitation of victim who is dancer of an orchestra party by the organizer is a grim reminder of perverse gender sexual violence in the society. Any women artist regardless of their field of performance, should never be reduced to an object of lust or subjected to any form of abuse. The dignity of artists lies in their art, therefore it is the responsibility of organizer that work place and environment of women artist is safe and respectful. It

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is duty of all to create an environment where every artist can perform and express themselves freely without fear and intimidation because they are torchbearers of culture, creativity and expression in society.

12-Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to applicant, criminal history of the applicant and severity of punishment, I do not find any good ground to release the applicant on bail.

13-Accordingly, the bail application is ***rejected***.

14-It is made clear that the observation contained in the instant order is confined to the issue of bail and shall not affect the merit of the trial.

Order Date :- 7.1.2025

Saurabh