

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 33015 of 2023

Applicant :- Dinesh @ Toni

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

Counsel for Applicant :- Rupesh Kumar Singh, Alok Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Praveen Kumar Singh, Advocate holding brief of Mr. Rupesh Kumar Singh, the learned counsel for applicant and the learned A.G.A. for State.
2. Affidavit of compliance filed by the learned A.G.A. in Court today is taken on record.
3. Perused the record.
4. This repeat application for bail has been filed by applicant-Dinesh @ Toni seeking his enlargement on bail in Case Crime No. 207 of 2022 under Sections 376, 5011, 354, 506 I.P.C., Sections 7/8 (2) POCSO Act, and Sections 3 (2) (5)A SC/ST Act, Police Station-Baghat, District-Baghat, during the pendency of trial.
5. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon first informant/opposite party-2 on 26.07.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant/opposite party-2 to oppose the present application for bail.
6. First bail application of applicant was rejected by this Court by a

detailed order dated 21.11.2022 passed in Criminal Misc. Bail Application No. 25633 of 2022 (Dinesh @ Toni Vs. State of U.P. and 3 others). For ready reference, order dated 21.11.2022 is reproduced herein under:

"1. Heard Mr. Nikhil Chaturvedi, Advocate, who has filed his Parcha on behalf of applicant (Dinesh @ Toni) in Court today which is taken on record, Mr. Rajneesh Kumar Upadhyay, the learned counsel for applicant-Aarif and the learned A.G.A. for State.

2. Perused the record.

3. These applications for bail have been filed by applicants, Dinesh @ Toni and Aarif seeking their enlargement on bail in Case Crime No.207 of 2022, under Sections 376, 511, 354, 506 I.P.C. and 7/8 POCSO Act, and 3(2)(V) (A) of S.C./S.T. Act, Police Station- Baghpat, District- Baghpat, during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice issued to the opposite party No.2 has been served. However, in spite of service of notice upon opposite party No.2, no one is present on behalf of the opposite party No.2 to press this bail application.

5. Record shows that in respect of an incident which is alleged to have occurred on 14.03.2022, a delayed F.I.R. dated 18.03.2022 was lodged by the first informant Dharam Pal (father of the prosecutrix) and was registered as Case Crime No.207 of 2022, under Sections 376, 511, 354, 506 I.P.C. and 7/8 POCSO Act, and 3(2)(V)(A) of S.C./S.T. Act, Police Station- Baghpat, District- Baghpat. In the aforesaid F.I.R., four persons namely, Dinesh @ Toni(applicant herein), Sahil, Arif (applicant herein) and Shajaad have been nominated as named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused with common object dislodged the modesty of the prosecutrix by forcibly committing rape upon her.

7. After lodging of afore-mentioned F.I.R., Investigating Officer proceeded with statutory investigation of concerned case crime in terms of chapter XII of Cr.P.C. He first examined the first informant, Dharm Pal (father of the prosecutrix) who has supported the prosecution story as unfolded in the F.I.R. He thereafter examined the prosecutrix under Section 161 Cr.P.C. wherein the prosecutrix has also not only supported the F.I.R. but has also elaborated the manner in which she was physically assaulted. Thereafter, prosecutrix was requested to have her medical examination. The Doctor who examined the prosecutrix however, did not find any injury on the body of prosecutrix so as to denote commission of sexual violence. The prosecutrix in her statement before the Doctor has reiterated her earlier statement as recorded under Section 161 Cr.P.C. As per the provisional opinion of the Doctor, "there is no sign of forceful penetration so final opinion can be given after FSL available". Certain samples were taken

from the body of prosecutrix for pathological examination. However, supplementary medico-legal report of the prosecutrix has not been brought on record.

8. During the course of investigation, Investigating Officer recovered the certificate issued by the Principal Sarvodya Inter College, Pavla Begmabad, Bagpat. As per aforesaid certificate, date of birth of the prosecutrix as recorded in the School record is 12.02.2006. The F.I.R. was lodged on 18.06.2022. As such, prosecutrix was aged about 16 years, 01 month and 05 days on the date of lodging of the F.I.R. Investigating Officer, thereafter examined other witnesses under Section 161 Cr.P.C. who have also supported the F.I.R.

9. Ultimately, on the basis of the above as well as other material collected by Investigating Officer during the course of investigation, he opined to submit the charge-sheet. Accordingly, Investigating Officer submitted the charge-sheet dated 26.04.2022 whereby all the named accused have been charge-sheeted under Sections 376, 511, 354, 506 I.P.C. and 7/8 POCSO Act, and 3(2)(V)(A) of S.C./S.T. Act.

10. Learned counsel for the applicant contends that though the applicants are named as well as charge-sheeted accused but they are innocent. It is next contended that medical evidence does not support the prosecution story as unfolded in the F.I.R. As such applicants are liable to be enlarged on bail. As per the material available on record, the prosecutrix was aged about 16 years of age on the date of alleged occurrence. It is further contended that there is contradiction in the allegations made in the F.I.R. and in the statement of the prosecutrix as recorded under Sections 161/164 Cr.P.C. and the statement given before the Doctor as prosecutrix in her aforesaid statements has gone beyond the basic prosecution case as unfolded in the F.I.R. Lastly, the learned counsel for applicant has drawn the attention of Court to the statement of the witnesses examined under Section 161 Cr.P.C. to point out that in all probability up to this stage the prosecution case is highly improbable. The prosecutrix and named co-accused Dinesh @ Toni were in love affair with each other and thus applicants have been falsely implicated in the crime in question. It is thus urged that in view of above, applicants are liable to be enlarged on bail. Even otherwise, applicants are men of clean antecedents having no criminal history to their credit except the present one. Applicants are in jail since 18.03.2022. As such, they have undergone more than 8 months of incarceration. In case, applicants are enlarged on bail, they shall not misuse the liberty of bail and shall cooperate with the trial

11. Per contra, the learned A.G.A. has opposed these applications for bail. He submits that applicants are named as well as charge-sheeted accused. As such applicants do not deserve any indulgence by this Court. It is then contended by learned A.G.A. that though the medical evidence does not support the prosecution story up to this stage but the supplementary medico-legal report is still awaited. As such no final opinion can be concluded on the basis of medical evidence. Learned A.G.A. has then invited the attention of the Court to the statement of the prosecutrix as recorded under Sections 161/164 Cr.P.C. and on basis thereof he submits that prosecutrix has been categorical and consistent in her statements and

the manner in which sexual assault was committed upon her. Referring to the judgment of Supreme Court in Phool Chandra Vs. State of Madhya Pradesh 2022 2 SCC 74 he submits that prosecution of accused for an offence under Section 376 I.P.C. can be maintained even on the statement of the prosecutrix/victim provided that statement of the victim/prosecutrix is of impeccable character. There is nothing on record to doubt the reliability or the credibility of the statements of the prosecutrix on account of exaggeration, embellishment or contradiction. It is thus urged that applicants do not deserve any indulgence by this Court.

12. When confronted with above, the learned counsel for applicants could not overcome the same.

13. Having heard the learned counsel for applicants, the learned A.G.A. for State and upon consideration of evidence on record, accusations made as well as complicity of applicant and coupled with the fact that applicants are named as well as charge-sheeted accused, the prosecutrix being categorical and consistent in her statements recorded under Sections 161/164 Cr.P.C. and the manner in which prosecutrix was assaulted, there being nothing on record to infer malicious prosecution of the applicants up to this stage or the credibility of the prosecutrix but without making any comment on the merits of the case, this court does not find any good ground to enlarge the applicant on bail.

14. Accordingly, these applications for bail fail and are liable to be rejected.

15. They are accordingly, rejected.

Order Date :- 21.11.2022 "

7. Present application came up for orders on 21.08.2023 and this Court passed the following order:

"1. Heard Mr. Alok Sharma, the learned counsel for applicant and the learned A.G.A. for State.

2. Learned counsel for applicant submits that the F.S.L. report in respect of the sample taken from the body of the prosecutrix has not yet been received.

3. In view of above, the hearing of present application for bail is adjourned.

4. Matter shall re-appear as fresh on 05.09.2023.

5. Learned A.G.A. shall ensure that the copy of F.S.L. report is positively received by him, before the next date fixed.

6. The concerned Director of the F.S.L. laboratory shall also ensure compliance of this order, before the next date fixed.

Order Date :- 21.8.2023 "

8. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. Applicant is in jail since 18.03.2022. As such, he has undergone almost 1 year and 9 months of incarceration. It is then contended that medical evidence which has come on record does not support the prosecution story. As such, applicant is liable to be enlarged on bail.

9. Even otherwise applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, the learned counsel for applicant submits that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheet accused, therefore he does not deserve any indulgence by this Court. Attention of the Court was then invited to the FSL report wherein the biological stains on articles 2 to 6 tallied with the blood samples of the applicant. As such medical evidence clearly supports the ocular version of the occurrence. He therefore submits that no new or good ground has been made out to enlarge the applicant on bail. As such, present repeat application for bail is liable to be rejected by this Court.

11. When confronted with above, the learned counsel for applicant could not overcome the same.

12. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant coupled with the fact that as per FSL report the blood stains on the articles of the prosecutrix clearly match with the blood sample of the applicant, therefore, medical evidence clearly supports the ocular version of the occurrence, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present repeat application for bail, this Court does not find any new, good or sufficient ground to enlarge the applicant on bail.

13. As a result, the present repeat application for bail fails and is liable to be **rejected**.

14. It is accordingly **rejected**.

Order Date :- 18.10.2023

YK