

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34515 of 2023

Applicant :- Mirza Gulrez Beg

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

Counsel for Applicant :- K.K.Rao, Sarvjeet Singh Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. K.K. Rao, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Mirza Gulrez Beg seeking his enlargement on bail in Case Crime No. 0077 of 2023, under Sections 376-AB, 506 IPC and Sections 5/6 POCSO Act, Police Station-Gorakhnath, District-Gorakhpur during the pendency of trial.

4. Present application for bail came up for orders on 04.10.2023 and this Court passed the following order:-

"1. Heard Mr. K.K.Rao, the learned counsel for applicant, and the learned A.G.A. for State

2. Perused the record.

3. Instant bail application has been filed by applicant-Mirza Gulrez Beg seeking his enlargement on bail in Case Crime No. 0077 of 2023 under Sections 376AB I.P.C. and 5/6 POCSO Act, Police Station-Gorakhnath, District-Gorakhpur during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon first informant/opposite party-4. However, in spite of service of notice, no one has put in appearance on behalf of first informant/opposite party-4 to oppose this application for bail.

5. After some arguments, it transpires that age of the prosecutrix has been determined as per her date of birth recorded in the Scholar Register of the prosecutrix wherein the date of birth of the prosecutrix is mentioned as 20.08.2011. By virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the judgement of Apex Court in P. Yuva Prakash Vs. State 2023 SC OnLine SC

846, the said document cannot be relied upon to conclude the age of the prosecutrix as per the date of birth of the prosecutrix recorded therein.

6. The learned A.G.A. submits that charge sheet has already been submitted against applicant on 01.04.2023.

7. In view of the above, Investigating Officer is directed to submit an application before court concerned in terms of Section 173 (8) Cr.P.C. seeking permission of the court below to conduct further investigation. After obtaining permission of Court, the Investigating Officer shall make an endeavour to find out the date of birth of the prosecutrix recorded in the institution which was first attended by her.

8. Let the necessary exercise be completed by the Investigating Officer within three weeks.

9. The photocopy of the supplementary case diary shall be transmitted by the Investigating Officer to this Court through the learned A.G.A. before the next date fixed.

10. Matter shall accordingly re-appear as fresh on 31.10.2023.

Order Date :- 4.10.2023"

5. Record shows that in respect of an incident, which is alleged to have occurred on 28.01.2023, a delayed FIR dated 04.02.2023 was lodged by first informant-Shobha Verma (Mother of the prosecutrix) and was registered as Case Crime No. 0077 of 2023, under Sections 506, 354-B IPC and Sections 9/10 POCSO Act, Police Station-Gorakhnath, District-Gorakhpur. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.

6. The gravamen of the allegations made in the FIR is to the effect that an unknown person abducted the daughter of the first informant and thereafter, committed aggravated sexual assault upon the daughter of the first informant i.e. the prosecutrix namely Y aged about 10 years.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. On the basis of statement of the prosecutrix and the first informant, the Investigating Officer identified the place of occurrence. He, thereafter, collected the CCTV footage from the vicinity (installed in the house of Mr. Ravendra Kumar Yadav). As per the said CCTV footage, the applicant was seen taking the prosecutrix on his bike. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 33 of the paper book. The prosecutrix in her aforesaid statement has clearly detailed the

manner of sexual assault. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix, in her statement before the Doctor, who medically examined her, has categorically supported her previous statement under Section 161 Cr.P.C. The Doctor, who medically examined the prosecutrix, did not find any signs on her body so as to denote commission of deliberate or forceful penetrative sexual assault. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein the prosecutrix has rejoined her earlier statement under Section 161 Cr.P.C. as well as her statement before the Doctor, who medically examined her. The Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. On the basis of above and other material collected by Investigating Officer during the course of investigation he came to the conclusion that complicity of applicant is fully established in the crime in question. Accordingly, the Investigating Officer submitted the charge sheet dated 01.04.2023 whereby applicant has been charge sheeted under Sections 376-AB, 506 IPC and Sections 5/6 POCSO Act.

8. Learned counsel for applicant submits that though the applicant is a charge sheeted accused yet he is liable to be enlarged on bail. With reference to the Medico Legal Report of the prosecutrix, he submits that there is no medical evidence to show that forceful or deliberate penetrative sexual assault was committed upon the prosecutrix. On the above premise, he contends that 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. Applicant is in jail since 21.03.2023. As such, he has undergone more than 7 and 1/2 months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. On the above premise, he 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 present application for bail. He contends that as per the statements of the prosecutrix recorded under Section 161 Cr.P.C., before the Doctor and under Section 164 Cr.P.C., applicant is guilty of committing

aggravated sexual assault upon the prosecutrix. As per the material on record, the date of birth of the prosecutrix recorded in the institution first attended by her as well as the statement of the Doctor, where the prosecutrix was born is 20.08.2011. The occurrence giving rise to present criminal proceedings occurred on 28.01.2023. As such, the prosecutrix was aged about 11 years and 5 months on the date of occurrence. He, therefore, submits that since the prosecutrix was below 13 years of age on the date of occurrence, therefore, applicant does not deserve any indulgence 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 perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that since the prosecutrix is a young girl of tender age (below 13 years), the prosecutrix in her statements under Section 161 Cr.P.C., before the Doctor, who medically examined her and under Section 164 Cr.P.C. has not only supported the FIR but has also categorically detailed the manner of occurrence, there being nothing on record to infer false and malicious prosecution of applicant nor any such material so as to conclude that applicant is innocent, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

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

14. It is accordingly **rejected**.

Order Date :- 16.11.2023

Vinay