

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38470 of 2023

Applicant :- Maiku Lal

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

Counsel for Applicant :- Kameshwar Singh, Sudhanshu Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Kameshwar Singh, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Maiku Lal seeking his enlargement on bail in Case Crime No. 143 of 2022, under Sections 498A, 376, 323, 504, 506 IPC and Sections 3/4 POCSO Act, P.S. Girwan, District Banda, during the pendency of trial.

Present application for bail came up for orders on 22.9.2023 and this Court passed the following order:-

"Heard Mr. Kameshwar Singh, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Maiku Lal seeking his enlargement on bail in Complaint Case No.16 of 2022, under Sections 498-A, 376, 323, 504, 506, IPC, and Section 3/4 Pocso Act, police station Girwan, district Banda.

At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon the first informant-opposite party-2 on 28.07.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party-2 to oppose the application for bail.

This is a very peculiar case. The complainant is the wife of the applicant. In the complaint so filed, the prosecutrix has relied upon her date of birth mentioned in her mark-sheet of Class-V.

By virtue of the provisions contained in Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015, the said certificate cannot be relied upon for determining the age of the prosecutrix as per the date of

birth of the prosecutrix recorded in the mark-sheet/scholar register/transfer certificate. Similar view has been taken by the Supreme Court in P. Yuvprakash Vs. State Represented by Inspector of Police 2023 SCC Online (SC) 846.

Since the present application for bail arises out of a complaint case, therefore, court below is directed to conduct an enquiry either itself or through a police officer regarding the age of the prosecutrix as per the date of birth of the prosecutrix recorded in the educational institution first attended by her. Let the necessary exercise be concluded by court below within a period of three weeks from today. The court below shall thereafter transmit it's report regarding above to this Court.

There is no document showing the medical determination age of the prosecutrix either. The Chief Medical Officer, Banda is also directed to get ossification/radio-logical test of the prosecutrix conducted for determining her age. The said exercise shall be completed within a period of three weeks from today. The age determination report shall be sent directly to this Court in a sealed envelop on or before the next date fixed.

Put up again as fresh on 17.10.2023."

In compliance of above order, the learned A.G.A. has placed the documents pertaining to medical determination of age of the prosecutrix by the Chief Medical Officer, Banda. As per the medical opinion, the prosecutrix is now said to be aged about 21 years.

Learned counsel for applicant contends that though the applicant is a named accused, yet he is liable to be enlarged on bail. The present criminal proceedings giving rise to present application for bail have emerged on the basis of an application dated 20.9.2021 under Section 156 (3) Cr. P. C. filed by prosecutrix which was registered as a complaint. Referring to the summoning order passed by Court below, the learned counsel for applicant submits that the applicant has been summoned under Sections 498A, 376, 323, 504, 506 IPC and Sections 3/4 POCSO Act. With reference to the medical opinion, the learned counsel for applicant contends that the marriage of the applicant was solemnized with prosecutrix on 11.12.2020, therefore, the prosecutrix was aged about 20 years on the said date. In view of above, no offence under Sections 3/4 POCSO Act can be said to have been committed by applicant. Even otherwise, prosecutrix is the legally wedded wife of applicant, therefore, no offence under Section 376 IPC can be said to have been committed by the applicant. On the above premise, he, therefore, submits that the applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 02.06.2023. As such, he has undergone more than 4 months of incarceration. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, submits that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

Per contra, the learned A.G.A. has opposed the prayer for bail. However, the learned A.G.A. could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of record, evidence, complicity of the accused, accusation made, the nature and gravity of offence, coupled with the fact that as per the medical opinion, the prosecutrix is now aged about 21 years, the occurrence giving rise to the present criminal proceedings is alleged to have occurred on 11.12.2020, as such, the prosecutrix was aged about 20 years on the date of occurrence, therefore, prima facie no offence under Sections 3/4 POCSO Act can be said to have been committed by the applicant, the prosecutrix is the legally wedded wife of the applicant, therefore, no offence under Section 376 IPC can be said to have been committed by the applicant, the clean antecedents of applicant, the period of incarceration undergone, therefore irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant Maiku Lal involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(iv) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The trial court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Mr. Shashank Ranjan, Senior Assistant in the Office of Chief Medical Officer, Banda has appeared in the Court along with the documents pertaining to the medical determination of age of the prosecutrix. which has been perused and taken on record. The same shall be transmitted to Court below by the Registry.

Order Date :- 17.10.2023

HSM