

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 34724 of 2023

Applicant :- Satyam

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

Counsel for Applicant :- Gaurav Gupta

Counsel for Opposite Party :- G.A.

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37102 of 2023

Applicant :- Salman

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

Counsel for Applicant :- Suresh Singh,Ritesh Singh

Counsel for Opposite Party :- G.A.,Babita Upadhyay,Ram Naresh Nigam

Hon'ble Rajeev Misra,J.

1. Heard Mr. Gaurav Gupta, the learned counsel for applicant-Satyam, Mr. Ritesh Singh, the learned counsel for applicant-Salman, the learned A.G.A. for State, Mrs. Babita Upadhyay, the learned counsel representing opposite party-4, High Court Legal Services Committee, High Court Allahabad and Mr. Ram Naresh Nigam, the learned counsel representing first informant, opposite party-2.

2. Perused the record.

3. These applications for bail have been filed by applicants-Satyam and Salman their enlargement on bail in Case Crime No.197 of 2023 under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, Police Station-Sadar Bazar, District-Shahjahanpur, during the

pendency of trial.

4. These applications case up for orders on 21.09.2023 and this Court passed the following orders

"1. Heard Mr.Gaurav Gupta, the learned counsel for applicant-Satyam, Mr. Ritesh Sing, the larned counsel for applicant Salman, the learned A.G.A. for State and Mrs. Babita Upadhyay the learned counsel representing opposite party-4, High Court Legal Services Authority, High Court Allahabad as well as Mr. R. N. Nigam, the learned counsel for first informant/opposite party-2.

2. Perused the record.

3. After some arguments, it transpires from record that the age of the prosecutrix has been determined on the basis of mark-sheet of Class VIIth and VIIIth of the prosecutrix namely Prachi and Naincy.

5. In view of above, determination of age of the prosecutrix on the basis of the certificate issued by the Principal of the Institution could not be relied upon by virtue of the provisions contained in Section 94 of Juvenile Justice (Care and Protection of Children) Act 2015.

6. The police report in terms of Section 173 (2) Cr.P.C. has been submitted on 30.05.2023. The Investigating Officer is therefore 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 and thereafter the Investigating Officer shall make an endeavour to discover the date of birth of the prosecutrix recorded in the school record where first attended by them. 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.

7. Let necessary exercise be completed within three weeks from today.

8. Matter shall accordingly re-appear as fresh on 12.10.2023. "

5. Subsequent to above order dated 21.09.2023, the learned A.G.A. has filed an affidavit of compliance which is already on record.

6. Record shows that in respect of an incident, which is alleged to have occurred in between 16.03.2023 to 17.03.2023, a prompt F.I.R. dated 17.03.2023 was lodged by first informant- Anil Kumar (father of the prosecutrix) and was registered as Crime No.197 of 2023 under Sections 363 I.P.C., Police Station-Sadar Bazar, District-Shahjahanpur, In the aforesaid F.I.R., applicant Salman has been nominated as solitary named accused.

7. The gravamen of the allegations made in the F.I.R is to the effect that named accused Salman enticed away the minor daughters of first informant i.e. the prosecutrix namely X, aged about 15 year and Y aged about 17 years.

8. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was recovered on 18.03.2023. After completing necessary formalities i.e. recording the statements of prosecutrix, medical examination of the prosecutrix, the statement of witnesses, the statement of prosecutrix under Section 164 Cr.P.C., Investigating Officer submitted the charge-sheet dated 30.05.2023 whereby applicants have has been charge sheeted under Sections 363, 366, 376 I.P.C. and Section 3/4 POCSO Act.

9. After submission of aforementioned charge sheet, cognizance was taken upon same by court concerned. Consequently, trial procedure commenced. During pendency of trial, first informant deposed before court below as P.W.-1. The prosecutrix namely Y aged about 17 years deposed before court below as P.W.-2. In his statement, the first informant has not supported the charge-sheet. However, P.W.-2, the prosexutrix namely Y in her deposition has implicated the applicant Satyam for having dislodged the modesty

of prosecutrix namely X, aged about 15 years.

10. The said statement was made on the disclosure of the prosecutrix X to the prosecutrix Y. Subsequent to order dated 21.09.2023, the Investigating Officer collected the date of birth of the prosecutrix namely X and Y recorded in the institution first attended by them. As per said material, the date of birth of the prosecutrix namely X, aged about 15 years in the F.I.R. was discovered as 25.07.2009. As such, the prosecutrix X was aged about 13 years, 7 months and 21 days on the date of occurrence.

11. Learned counsel for applicant-Satyam contends that applicant is innocent. Applicant-Satyam is not named in the F.I.R.. Though the applicant is a charge-sheeted accused yet he is liable to be enlarged on bail. Attention of the Court was then invited to the statements of the prosecutrix namely X recorded under Sections 161/164 Cr.P.C. On the basis of above, it is urged by learned counsel for applicant-Satyam that no offence of committing rape has been alleged against present applicant. He therefore submits the applicant Satyam is liable to be enlarged on bail.

12. Even otherwise applicant-Satyam is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. Applicant is in custody since 19.03.2023. As such he has undergone seven and a half months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore the entire evidence sought to 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. The medical evidence does not support the charge-sheet. 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.

13. Mr. Ritesh Singh the learned counsel for applicant Salman contends that since P.W.-1 and P.W.-2 i.e. the first informant and the prosecutrix Y have not implicated the applicant in the crime in question, therefore the present applicant is liable to be enlarged on bail.

14. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since applicants are charge-sheeted accused therefore they do not deserve any indulgence by this Court. Attention of the Court was then invited to Medico Legal Examination report of the prosecutrix. Much emphasis was laid to the opinion of the Doctor with regard to private part of the prosecutrix, which is on record at page 48 of the paper book and reads as under:

Hymen Old Torned

15. On the basis of above, it is thus urged by the learned A.G.A. and the learned counsel for first informant that medical evidence clearly supports the ocular version of the occurrence. According to the learned A.G.A., since the prosecutrix-X is aged about 13 years, 7 months and 21 days on the date of occurrence as per her date of birth recorded in the institution first attended by her, therefore even if the prosecutrix has consented, no advantage can be claimed by the applicant simply on the above premise. To buttress their submissions they have relied upon the judgement of the Supreme court in **X (Minor) Vs. The State of Jharkhand and Another (2022 Live Law (SC) 194**. On the aforesaid premise, it

is thus urged that no good ground exists to enlarge the applicant Satyam on bail. As such, present applicant for bail filed by applicant Satyam is liable to be rejected.

16. In rejoinder, the learned counsel for applicant-Satyam has opposed the submissions urged by the learned A.G.A. and the learned counsel for first informant. Much emphasis has been led to the statements of the prosecutrix namely X recorded under Sections 161/164 Cr.P.C. However, the learned counsel for applicants could not overcome the recital occurring in the statements of another prosecutrix namely Y, which is on record at page 5 of the supplementary affidavit filed in the bail application of applicant-Salman.

17. Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned counsel representing first informant, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that medical evidence fully supports the commission of sexual assault upon the prosecutrix, complicity of applicant Satyam is *firma facie* established in the statement of another prosecutrix deposed before court below as P.W.-2, up to this stage, there is nothing on record to infer malicious or false prosecution of the applicants, therefore, irrespective of the submissions urged by learned counsel for applicant-Satyam in support of bail application of applicant Satyam, this court does not find any good or sufficient ground to enlarge the applicant-Satyam on bail.

18. As a result, bail application of applicant Satyam fail and is liable to be rejected.

19. It is accordingly rejected

20. In so far as bail application of applicant-Salman is concerned, in view of above the recital contained in the statement of the prosecutrix namely Y who has deposed before court below as P.W.-2 allegation with regard to commission of sexual assault upon prosecutrix-Y has been made against accused Satyam, furthermore the statements of prosecutrix X recorded under Section 164 Cr.P.C. also shows the above, the clean antecedents of applicant Salman, period of incarceration undergone, police report (charge-sheet) under 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 crystalized, yet in spite of above, the learned A.G.A. and the learned counsel for first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the course of trial, the period of incarceration undergone by applicant, therefore irrespective of the objections raised by learned A.G.A. and the learned counsel for first informant in opposition of the present application for bail of applicant Salman but without expressing any opinion on the merits of the case, applicant-Salman has made out a case for bail.

21. Accordingly, bail applicatio of applicant-Salman is **allowed**.

22. Let the applicant-**Salman** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court

on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

23. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 6.11.2023

YK