

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35109 of 2023

Applicant :- Arvind @ Tarra

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

Counsel for Applicant :- Abhinav Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Anurag Dubey, Advocate holding brief of Mr. Abhinav Dwivedi, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Arvind @ Tarra seeking his enlargement on bail in Case Crime No.351 of 2023, under Sections 376, 506 IPC and Section 3/4 Pocso Act, police station Chhibramau, district Kannauj, during the pendency of trial.

Perused the record.

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-4 on 03.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party-4 to oppose the present application for bail.

This application for bail came up for orders on 22.09.2023 and this Court passed the following order :-

"1. Heard Mr. Abhinav Dwivedi, 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-Arvind @ Tarra seeking his enlargement on bail in Case Crime No. 351 of 2023 under Sections 376, 506 I.P.C. and 3/4 POCSO Act, Police Station-Kotwali Chhibramau, District-Kannauj, 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, inspite of service of notice, no one has put in appearance on behalf of first informant/opposite party-4 to oppose this application.

5. After some arguments, it transpires from record that the age of the prosecutrix has been determined on the basis of her date of birth mentioned in the certificate issued by the Principal of the Primary School. The said certificate does contain any recital to the effect that it is the very institution first attended by the prosecutrix.

5. In view of above, the 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. Reference may also be made to the judgement of Apex Court in P. Yuva Prakash Vs. State 2023 SC OnLine SC 846.

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. Thereafter the Investigating Officer shall make an endeavour to discover the date of birth of the prosecutrix recorded in the school record first attended by them.

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

8. 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.

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

Pursuant to the above order dated 22.09.2023, the learned A.G.A. has filed a compliance affidavit in Court today, which is taken on record.

Record shows that in respect of an incident which is alleged to have occurred on 08.05.2023, a delayed first information report dated 14.05.2023 was lodged by the first informant, namely, Virendra Singh (father of the deceased) and was registered as Case Crime No.0351 of 2023, under Sections 376, 506 IPC and Section 3/4 PocsO Act, police station Chhibramau, district Kannauj. In the aforesaid first information report, one Arvind @ Tarra (applicant herein) has been nominated as solitary named accused.

The gravamen of the allegations made in the FIR is to the effect that the named accused Arvind @ Tarra dislodged the modesty of daughter of the first informant, namely 'X' aged about 16 years i.e. the prosecutrix deliberately and forcibly.

After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned Case Crime Number in terms of Chapter XII CrPC. The statement of the prosecutrix was recorded under Section 161 CrPC, which is on record at page 51 of the paper book. The prosecutrix in her aforesaid statement has not only fully supported the FIR but also detailed the manner of occurrence. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor who examined her has rejoined her previous statement under Section 161 CrPC. However, the Doctor, who medically examined her, did not find any fresh injury on the body of prosecutrix so as to denote commission of deliberate or forcible sexual assault. However, the prosecutrix has made disclosure before the Doctor, which is adverse to the

applicant. The same is exhibit from the recital occurring at page 41 of the paper book. With regard to the private part of the prosecutrix, the Doctor has opined as follows :

"Hymen : Old, ruptured, torned and healed."

Certain samples were collected from the body of deceased for pathological examination. However, the result of the same is in negative.

Ultimately, the statement of the prosecutrix was recorded under Section 164 CrPC, which is on record at page 62 of the paper book. The prosecutrix in her aforesaid statement has remained consistent, inasmuch as, she has rejoined her previous statement under Section 161 CrPC.

During course of investigation, Investigation Officer examined the first informant and other witnesses under Section 161 CrPC, who have supported the FIR. He further collected the certificate issued by the Principal of the institution where the prosecutrix had initially studied. As per the said certificaee, the date of birth of the prosecutrix as recorded in the school record is 01.01.2009. The occurrence giving rise to the present criminal proceeding is alleged to have occurred on 08.05.2023. As such, the prosecutrix was said to be aged about 14 years on the date of occurrence. On the basis of above and other material collected by the 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, he submitted the charge-sheet dated 28.05.2023, whereby applicant has been charge-sheeted under Sections 376, 506 IPC and Section 3/4 Pocso Act.

At the very outset, the learned A.G.A. submits that subsequent to above order dated 22.09.2023, Investigating Officer conducted further investigation. As per subsequent investigation, Investigating Officer collected the date of birth of the prosecutrix recorded in the school record first attended by her. The date of birth of the prosecutrix recorded therein is 17.11.2006. As such, the prosecutrix was aged about 16 years 06 months and few days on the date of occurrence.

Learned counsel for the applicant contends that though the applicant is named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. The prosecutrix is aged about 16 years 06 months and few days as per her date of birth recorded in the institution first attended by her. The medical evidence does not support the ocular version of the occurrence. On the basis of above, he 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. The applicant is in custody since 25.05.2023. As such, he has undergone more than four months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named/charge-sheeted accused therefore, he does not deserve any indulgence by this Court. Attention of the Court was invited to the judgement of Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74** and on basis thereof it is contended by the learned A.G.A. that prosecution of an accused for an offence of rape and sexual assault can be maintained in the absence of medical evidence and on the solitary statement of the prosecutrix. When the aforesaid test is applied to the statements of the prosecutrix recorded under Section 161/164 CrPC, it is apparent that the prosecutrix has remained clear, categorical and consistent with the regard to the commission of sexual assault as well as the manner of assault made by the accused upon her. Much emphasis was laid on the recital contained at page 41 of the paper book, which is against the applicant. On the above premise, the learned A.G.A. contends that complicity of the applicant in the crime in question stands fully established. Moreover, the prosecutrix is a young girl aged about 16 years 06 months and few days whose modesty was dislodged deliberately and forcibly by the applicant. Up to this stage, there is nothing on record to infer false and malicious prosecution of the applicant. The crime committed by the applicant is not private in nature but a crime against the society. It is thus urged by the learned A.G.A. that no sympathy be shown by this Court in favour of the applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made, coupled with the fact that the submissions urged by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant therefore irrespective of the

very submissions urged by the learned counsel for applicant in support of present application for bail, this Court does not find any good ground to enlarge the applicant on bail.

This application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 19.10.2023.
Rks.