

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37644 of 2023

Applicant :- Sunil Kumar @ Kale

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

Counsel for Applicant :- R P Rajan,Prabha Upadhyay

Counsel for Opposite Party :- G.A.,Dheeraj Maheshwari

Hon'ble Rajeev Misra,J.

Heard Mr. R.P. Rajan, 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- Sunil Kumar @ Kale seeking his enlargement on bail in Case Crime No. 112 of 2023 under Sections 363, 354, 354D, 120B, 376, 506 IPC 5g/6 POCSO Act, Police Station- Loni Border District-Ghziabad during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred from 16.2.2023 to 28.2.2023, a belated F.I.R. dated 8.3.2023 was lodged by first informant/prosecutrix namely, X and was registered as Case Crime No. 112 of 2023 under Sections 363, 354, 354D, 120B, 376, 506 IPC 5g/6 POCSO Act, Police Station- Loni Border District-Ghziabad. In the aforesaid F.I.R., two person namely, Sunil Kumar @ Kale and Faisal has been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused kidnapped the prosecutrix and therefore deliberately and forcibly dislodged the modesty of the prosecutrix.

At the very outset, the learned counsel for applicant submits that after completion of statutory investigation of concerned case crime number in terms Chapter XII Cr.P.C aforementioned F.I.R. was lodged. Thereafter the statement of the prosecutrix was recorded under section 161 Cr.P.C., which is on record at page 37 of the paper book. The prosecutrix in her aforesaid statement has supported the F.I.R. However, the offence regarding commission of rape upon prosecutrix has been specified only against applicant

Sunil Kumar @ Kale. Thereafter the prosecutrix was requested for her internal medical examination. The Doctor who medically examined the prosecutrix did not find any injury on her body so as to denote commission of sexual assault. However, with regard to the private part of the prosecutrix, the Doctor opined as follows:-

"Hymen absent"

Ultimately, the statement of the prosecutrix was recorded under section 164 Cr.P.C, which is on record at page 37 of the paper book, wherein the prosecutrix has rejoined her previous statement under section 161 Cr.P.C. Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C who have substantially supported the F.I.R.

During course of investigation, Investigating Officer recovered the High School certificate of the prosecutrix, as such, the prosecutrix was aged about 17 years and two months on date of occurrence. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of applicant is established in the crime in question. He, accordingly submitted the charge sheet dated 5.5.2023, whereby applicant- Sunil kumar @ Kale has been charge sheeted under sections 363, 354, 354D, 120B, 376, 506 IPC and 3/4 POCSO Act.

Learned counsel for applicant submits that though applicant is named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. With reference to the medical opinion of the prosecutrix, he submits that no injury was found on the body of prosecutrix so as to denote commission of deliberate or forceful sexual assault, Prosecutrix is a consenting party. Moreover, prosecutrix was aged about 17 years on the date of occurrence.

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 12.3.2023. As such, he has undergone more than six months of incarceration. The Police report in terms of Section 173(2) has already been submitted against applicant therefore the entrie evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of 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. and the learned counsel for first informant has opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. Prosecutrix in her statement under section 161 Cr.P.C. has clearly implicated the applicant. The medical evidence also supports that ocular version of the occurrence inasmuch as the opinion of the Doctor who medically examined the prosecutrix with regard to private part of the prosecutrix is against the applicant. Prosecutrix is young girl aged about 17 years and two months whose modesty has been dislodged forcibly and deliberately. On the above premise, learned A.G.A. submits that no sympathy be shown by this court in favour of 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, evidence, nature and gravity of offense as well as complicity of applicant, accusation made coupled with the fact that prosecutrix in her statement under section 161/164 Cr.P.C. has remained clear, categorical and consistent, the prosecutrix has fully supported the occurrence, the medical opinion expressed by the Doctor who medically examined, the Doctor also supports the F.I.R, the prosecutrix is a young girl aged about 17 years and two months. Up to this stage, there is nothing on record on the basis of which, it cannot be inferred that prosecution story is false or there is malicious prosecution of applicant, no such material has been brought on record so as to infer the false implication of applicant in the crime in question to doubt the credibility of prosecutrix, therefore irrespective of the submissions urged by the learned counsel for applicant in support of present application for bail, 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.

As a result, the bail application fails and is liable to be rejected.

It is accordingly rejected.

Order Date :- 13.10.2023

Arshad