

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 35913 of 2023

Applicant :- Laxman Mandal

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

Counsel for Applicant :- Ramesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ramesh Kumar Pandey, the learned counsel for applicant and the learned A.G.A. for State.

2. This bail application has been filed by the applicant Laxman Mandal seeking his enlargement on bail in Case Crime No. 596 of 2023, under Sections 363, 376, 366 IPC, and Sections 3/4 POCSO Act, Police Station-Sahibabad, District-Trans Hindon (Commissionerate Ghaziabad) during the pendency of trial.

3. At the very outset, the learned A.G.A. submits that notice of present application for bail has already been served upon opposite party 2 on 06.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of opposite party 2 to oppose this application for bail.

4. Record shows that in respect of an incident, which is alleged to have occurred on 28.05.2023, a prompt FIR dated 28.05.2023 was lodged by first informant-Mohd. Sultan Ansari (father of the prosecutrix) and was registered as Case Crime No. 596 of 2023, under Sections 363, 376, 366 IPC, and Sections 3/4 POCSO Act, Police Station-Sahibabad, District-Trans Hindon (Commissionerate Ghaziabad). In the aforesaid FIR, applicant-Laxman Mandal has been nominated as solitary named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused Laxman Mandal i.e. applicant herein enticed away the minor daughter of the first informant i.e. the prosecutrix namely - X aged about 15 years.

6. Present application for bail came up for orders on 19.10.2023 and this Court passed the following order:-

"1. Heard Mr. Ramesh Kumar Pandey, 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-Laxman Mandal seeking his enlargement on bail in Case Crime No. 596 of 2023, under Sections 363, 376, 366 IPC and Sections 3/4 POCSO Act, Police Station-Sahibabad, District-Ghaziabad during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present application for bail has been served upon first informant-opposite party 2 on 06.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose this application for bail.

5. After some arguments, it transpires that the age of the prosecutrix has been determined as per her date of birth recorded in the Certificate dated 26.03.2022 issued by the Principal of the institution where the prosecutrix had last studied. In the said certificate, the date of birth of the prosecutrix has been mentioned as 03.10.2008. Admittedly, no determination of age of the prosecutrix with reference to the date of birth of the prosecutrix recorded in the said document could be made by virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Similar view has been taken by the Supreme Court in the case of P. Yuvaprakash Vs. State, 2023 SCC OnLine SC 846.

6. Learned A.G.A. submits that the charge sheet has already been submitted against applicant.

7. In view of above, the Investigating Officer is directed to submit an application before court below in terms of Section 173(8) Cr.P.C. seeking the permission of Court to conduct further investigation in the matter. After permission has been accorded by the court below, Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her or any other document regarding the date of birth of the prosecutrix which may be inconsonance with the provisions contained in Sections Sections 94(2)(i) and 94(2)(ii) of the Act of 2015.

8. The necessary exercise shall be completed within a period of three weeks from today.

9. The copy of 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 16.11.2023"

7. Subsequent to above order dated 19.10.2023, the learned A.G.A. has filed the affidavit of compliance in Court today, which is taken on record.

8. 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. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 16 of the paper book. The prosecutrix in her aforesaid statement has not supported the FIR. To the contrary, as per the statement of the prosecutrix referred to above, she appears to be in relationship with the applicant. The prosecutrix accompanied the applicant out of her own sweet will and thereafter, went with the applicant to various places. Thereafter, the prosecutrix was requested for her internal medical examination. According to the learned A.G.A., as per the Medico Legal Examination Report of the prosecutrix, no signs were found on the body of the prosecutrix to denote commission of deliberate sexual assault. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the results of the same are in negative. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record at page 19 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C.

9. During course of investigation, Investigating Officer examined the Principal of the institution where the prosecutrix had last studied. As per the certificate dated 26.03.2022 issued by the Principal of the said institution, the date of birth of the prosecutrix as recorded in the school record is 03.10.2008. The FIR giving rise to present criminal proceedings was lodged on 28.05.2023. As such, the prosecutrix was said to be aged about 14 years, 7 months and 24 days on the date of the lodging of FIR. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the FIR. 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 01.08.2023, whereby applicant has been charge sheeted under Sections 363, 376, 366 IPC, and Sections 3/4 POCSO Act.

10. Learned counsel for applicant submits that though applicant is a named as well as 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 recorded under Sections 161 and 164 Cr.P.C. On the basis of above, it is urged by the learned counsel for

applicant that the prosecutrix is a willing and consenting party. As such, no offence under Sections 363 and 366 IPC can be said to have been committed by the applicant inasmuch as, the prosecutrix was not abducted or kidnapped by the applicant. Referring to the Medico Legal Examination report of the prosecutrix, the learned counsel for applicant submits that medical evidence does not support the charge sheet inasmuch as, no signs were found by the Doctor on the body of the prosecutrix denoting the commission of deliberate and forceful sexual assault. Moreover, the prosecutrix is a consenting party. As per her statement under Section 161 Cr.P.C., the prosecutrix has categorically stated that physical relations were developed between the prosecutrix and the applicant upon the consent of the prosecutrix herself. On the above premise, he submits that applicant cannot be said to be guilty of dislodging the modesty of the prosecutrix. As such, applicant is liable to be enlarged on bail.

11. 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 08.06.2023. As such, he has undergone more than 5 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 incriminating 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.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Applicant is guilty of dislodging the modesty of the prosecutrix who is a young girl aged about 15 years. As such, no sympathy be shown by this Court in favour of applicant. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the prosecutrix herself came to the applicant and thereafter, accompanied him to various places, as

such, no offence under Sections 363 and 366 IPC can be said to have been committed by applicant inasmuch as, the prosecutrix was neither abducted nor kidnapped by the applicant, the medical evidence does not support the charge sheet inasmuch as, no signs were found on the body of the prosecutrix denoting the commission of deliberate physical or sexual assault, the prosecutrix in her statement under Section 164 Cr.P.C. has not alleged that the applicant has dislodged her modesty either forcibly or upon the consent of the prosecutrix, as such, the prosecutrix has not been clear, categorical and consistent in her statements qua the offence under Section 376 IPC and Sections 3/4 POCSO Act, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of 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 crystallized, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, 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, applicant has made out a case for bail.

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

15. Let the **applicant-Laxman Mandal**, be released on bail in the aforesaid case crime number 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) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/HER 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.

16. 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.

Order Date :- 16.11.2023

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