

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 35911 of 2023

**Applicant :-** Ravinder Pal

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

**Counsel for Applicant :-** Vivek Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Vivek Kumar Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Affidavit of compliance filed by the learned A.G.A. in Court today, is taken on record.

3. Perused the record.

3. Present application for bail was heard on 19.10.2023 and this Court passed the following order:-

*"1. Heard Mr. Vivek Kumar Singh, 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-Ravinder Pal seeking his enlargement on bail in Case Crime No. 58 of 2023, under Sections 376, 504, 506 IPC and Sections 5/6 POCSO Act, Police Station-Rampur, District-Jaunpur 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 4 on 12.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 4 to oppose this application for bail.*

*5. After some arguments, it transpires that age of the prosecutrix has been determined as per her date of birth recorded in the Transfer Certificate of Class-8 of the prosecutrix dated 23.03.2023. 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*

**6. Learned A.G.A. submits that the charge sheet has already been submitted against applicant on 08.04.2023.**

**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. Considering the fact that the prosecutrix has delivered a baby girl on 07.03.2023, it is desirable that the DNA profile of the new born child and the applicant be conducted to ascertain as to whether the applicant is the biological father of the new born child or not.**

**11. In view of above, let the DNA test of the applicant and the new born child be got conducted by the Chief Medical Officer, Jaunpur within the aforesaid period.**

**12. The copy of DNA report shall also be transmitted by the Chief Medical Officer, Jaunpur to this Court through the learned A.G.A. before the next date fixed.**

**13. Matter shall, accordingly, re-appear as fresh on 16.11.2023."**

4. The necessary document require to be collected pursuant to above order dated 19.10.2023 have been brought on record by means of affidavit of compliance filed by the learned A.G.A. in Court today.

5. Record shows that an FIR dated 22.03.2023 was lodged by first informant-Ramjas (father of the prosecutrix) and was registered as Case Crime No. 0058 of 2023, under Sections 376, 504, 506 IPC and Sections 5/6 POCSO Act, Police Station-Rampur, District-Jaunpur. In the aforesaid FIR, 4 persons namely - (1) Ravindra Pal (applicant herein), (2) Arvind, (3) Pannalal Pal and (4) Urmila Devi have been nominated as named accused.

6. The gravamen of the allegations made in the FIR is to the effect

that named accused Ravindra Pal enticed away the daughter of the first informant namely X on 28.05.2022. He, thereafter, repeatedly and continuously dislodged her modesty. Ultimately, on 07.03.2023, the daughter of the first informant i.e. the prosecutrix gave birth to a girl child.

7. 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 27 of the paper book. The prosecutrix in her aforesaid statement has supported the FIR but with the rider that she was in acquaintance with the applicant and was in telephonic conversation with the applicant for the last 10 months. Subsequent to above, the prosecutrix was requested for her internal medical examination. However, the prosecutrix refused for her internal medical examination. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record at page 33 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C.

8. During course of investigation, Investigating Officer recovered the School Leaving Certificate of Class-8 of the prosecutrix dated 23.03.2023 wherein the date of birth of the prosecutrix is recorded as 15.08.2007. The occurrence giving rise to present criminal proceedings as per the FIR is alleged to have occurred on 28.05.2022. As such, the prosecutrix was aged about 15 years, 9 months and 13 days on the date of occurrence. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have fully 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 named accused is fully established in the crime in question. He, accordingly, submitted the charge sheet dated 08.04.2023 whereby applicant-Ravindra Pal has been charge sheeted under Sections 376, 504, 506 IPC and Sections 5/6 POCSO Act whereas the other 3 named accused have been charge sheeted under Sections 504, 506 IPC.

9. Learned counsel for applicant contends that applicant is ready to marry with the prosecutrix. On the above premise, he, therefore, submits that applicant is liable to be enlarged on bail.

10. 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 23.03.2023. As such, he has

undergone more than 8 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 circumstance has emerged on the record necessitating the custodial arrest of 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.

11. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused, therefore he does not deserve any indulgence by this Court. Attention of the Court was then invited to the F.S.L. report dated 08.11.2023 (Annexure-IV to the affidavit of compliance). As per the F.S.L. report, the YSR-DNA profile test of the new born baby was conducted with reference to the sample taken from the body of mother and applicant. The same is positive. As such, applicant is the biological father of the new born child.

12. According to the learned A.G.A., the solitary ground urged by the learned counsel for applicant cannot be considered by this Court while hearing the bail application of applicant. The same can be placed before court below at the time of trial. In case, the applicant solemnizes marriage with the applicant then in that eventuality, court below may consider enlarging the applicant on bail. Learned A.G.A. thus contends that since criminality committed by the applicant is fully established, therefore, no sympathy be shown by this Court in favour of applicant.

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, complicity of accused, accusations made coupled with the fact that the prosecutrix was a young girl aged about 15 years, 9 months and 13 days on the date of occurrence, the prosecutrix came in family way on account of the act of applicant and ultimately, delivered a girl child, the YSR DNA profile of the new born child tallies with the DNA profile of the applicant, as such, applicant is the biological father of the new born child, therefore, the allegations made in the FIR qua the criminality committed by the applicant upon the prosecutrix is fully established, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

**Order Date :- 30.11.2023**

Vinay