

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36794 of 2023

Applicant :- Amit Ram

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

Counsel for Applicant :- Dharm Jeet Singh,Hari Bans Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Hari Bans Singh, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This bail application has been filed by the applicant Amit Ram seeking his enlargement on bail in Case Crime No. 141 of 2022, under Sections 363, 366 376(3) IPC and Section 3/4(2) PCOSO Act, P.S. Bansdeeh Road, District Ballia, during the pendency of trial.

Present application for bail came up for orders on 26.9.2023 and this Court passed the following order:-

"Heard Mr. Hari Bans Singh, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Amit Ram seeking his enlargement on bail in Case Crime No. 141 of 2022, under Sections 363, 366, 376 (3) IPC and Sections 3/4(2) PCOSO Act, P.S. Bansdeeh Road, District Ballia, during the pendency of trial.

Perused the record.

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. 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.

After some arguments, it transpires that the age of the prosecutrix has been determined on the basis of the date of birth recorded in the certificate issued by the Principal of the Institution. The determination so made is manifestly illegal. By virtue of provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (herein after referred to as the Act), the age of the prosecutrix can be determined only as per the date of birth of the child recorded in the documents mentioned in sub Sections (a) and (b) of Section 94 of the Act. Since the document relied upon by the prosecution regarding above does not fall in the said categories. Therefore, the determination of age so made cannot be taken into consideration.

Learned A.G.A. submits that charge sheet has been submitted against

applicant on 10.11.2022. In view of above, Investigating Officer is directed to submit an application before Court below in terms of Section 173 (8) Cr. P. C. seeking permission of the Court to conduct further investigation. Thereafter, Investigating Officer shall endeavour to discover the date of birth of the prosecutrix recorded in the institution first attended by her. The Investigating Officer shall be at liberty to collect any other document which may be in consonance with the provisions of Section 94 (1) (a) and 94 (1) (b) of the Act. The Chief Medical Officer, Ballia is directed to get the ossification/radiological test of the prosecutrix conducted to determine her medical age. The said exercise shall also be completed within the aforesaid period of three weeks. The copy of the supplementary case diary shall be transmitted to this Court through the learned A.G.A., whereas the copy of the report regarding medical determination of age of the prosecutrix shall be sent directly to this Court in a sealed envelop before the next date fixed.

Matter shall re-appear as fresh on 18.10.2023."

Pursuant to above order dated 26.9.2023, the Investigating Officer namely Ramesh Chandra Dwivedi has appeared in person along with the documents pertaining to medical determination of the age of the prosecutrix in a sealed envelop. The same has been placed before the Court which is taken on record.

Record shows that in respect of an incident which is alleged to have occurred on 27.7.2022 a delayed F.I.R. dated 28.7.2022 was lodged by first informant Munnilal Ram (father of the prosecutrix) and was registered as Case Crime No. 141 of 2022, under Sections 363 IPC and Section 3/4(2) PCOSO Act, P.S. Bansdeeh Road, District Ballia. In the aforesaid F.I.R., applicant Amit Ram has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused i.e. applicant enticed away the minor daughter of the first informant i.e. the prosecutrix namely X aged about 13 years.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime no. in terms of Chapter XII Cr. P. C. The prosecutrix herself came to her house. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr. P. C., which is on record at page 23 of the paper book. The prosecutrix in her aforesaid statement has not supported the F.I.R. The prosecutrix has further stated that she has solemnized marriage with the applicant. The genesis of the statement is that the prosecutrix is a willing and consenting party. The prosecutrix joined applicant out of her own free will. Thereafter, the prosecutrix was requested for her internal medical examination, which was refused by her. However, upon external examination, no injury was found on the body of the prosecutrix so as to denote commission of deliberate or forceful sexual assault.

Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr. P. C., which is on record at page 29 of the paper book, wherein the prosecutrix has rejoined her previous statement recorded under Section 161 Cr. P. C. During the course of investigation, the Investigating Officer examined the 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 certificate from the Principal of the institution last attended by the prosecutrix, wherein her date of birth is mentioned as 1.7.2009. On the basis of above and other material collected by him during course of investigation, Investigating Officer came to the conclusion that complicity of applicant is established in the crime in question. On the basis of above, he came to the conclusion that complicity of applicant is established in the crime in question. He, accordingly, submitted the charge sheet dated 14.12.2022, whereby applicant has been charge sheeted under Sections 363, 366 376(3) IPC and Section 3/4(2) PCOSO Act.

The 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. The documents relied upon by the prosecution for determining the age of the prosecutrix as per the date of birth mentioned therein cannot be looked into by virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Since, there is no document on record regarding the date of birth of the prosecutrix in consonance with the aforesaid provisions, therefore, the age of the prosecutrix as per the medical evidence alone has to be considered. As per the medical determination of age, prosecutrix is said to be aged about 16-17 years.

Learned counsel for applicant then contended that the prosecutrix in her statement recorded under Sections 161/164 Cr. P. C. has clearly and categorically stated that she has solemnized marriage with the applicant. Though the prosecutrix was below 18 years of age on the date of her marriage with the applicant, yet the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11 (2) of the Hindu Marriage Act. Upto this stage, no proceedings has been initiated by the prosecutrix for declaration of her marriage with the applicant as void. On the basis of above, he, therefore, contends that the criminality, if any, committed by the applicant stands washed of.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in

jail since 9.11.2022. As such, he has undergone more than 11 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, yet upto this stage, no such circumstance has emerged from the record necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. However, he. could not dislodge the factual/legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

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 and coupled with the fact that the prosecutrix in her statement under Sections 161/164 Cr. P. C. has clearly and categorically stated that she has solemnized marriage with the applicant, therefore, the criminality, if any, committed by the applicant stands washed of, though the prosecutrix was below 18 years of age on the date of her marriage with the applicant, however, the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix by virtue of the provisions contained in Section 11 (2) of the Hindu Marriage Act, no proceedings has been initiated by the prosecutrix for declaration of her marriage with the applicant as void, as per the medical opinion, the prosecutrix is said to be aged about 16-17 years, 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, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet in spite of above, no such circumstance has emerged on the record necessitating the custodial arrest of the 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, the applicant has made out a case for bail.

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

Let the applicant **Amit Ram** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with two heavy 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(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 him 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.

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.

The document pertaining to the medical determination of age, which has been produced by the Investigating Officer in Court today, is accepted on the record. However, the same shall be transmitted by the Registry to the Court below.

Order Date :- 18.10.2023/HSM