

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 36129 of 2023

Applicant :- Ganga Prasad Yadav

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

Counsel for Applicant :- Satish Sharma

Counsel for Opposite Party :- G.A.,Dheeraj Kumar Dwivedi,Gunjan Sharma,Shiv Shanker Pandey

Hon'ble Rajeev Misra,J.

1. Heard Mr. Satish Sharma, the learned counsel for applicant, the learned A.G.A. for State and Ms. Gunjan Sharma, the learned counsel representing opposite party-2, High Court Legal Service Committee, High Court Allahabad.

2. Perused the record.

3. Learned A.G.A submits that pursuant to order dated 10.10.2023, an affidavit of compliane has been filed in the registry on 01.11.2023 but the same is not on record.

4. Registry is directed to trace out the said affidavit and place it on record.

5. Instant bail application came up for orders on 10.10.2023 and this Court passed the following order:

"Heard Mr. Ashok Kumar Pandey, Advocate holding brief of Mr. Satish Sharma, the learned counsel for applicant, the learned A.G.A. for State, Smt. Gunjan Sharma, the learned counsel representing opposite party-2 (High Court Legal Service Committee, High Court, Allahabad) and Mr. Dheeraj Kumar Dwivedi, the learned counsel representing first informant-opposite party-4.

Perused the record.

This application for bail has been filed by applicant-Ganga Prasad Yadav seeking his enlargement on bail in Case Crime No.0068 of 2022, under Sections 363, 366, 376 IPC and Section 5/6 Pocso Act, police station

Utravon, district Prayagraj, during the pendency of trial.

After some arguments, it transpires from record that the age of the prosecutrix has been determined as per her date of birth mentioned in the Certificate issued by the Principal of the institution from where the prosecutrix had passed out Class-V. As per the said document, the date of birth of the prosecutrix as recorded in the school record is said to be 12.09.2008. However, the said certificate does not contain the recital that it was the same institution which was first attended by the prosecutrix. The reliance so placed upon the aforesaid document is patently erroneous in view of Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015. The age of the prosecutrix can be determined only as per her date of birth recorded in any of the document mentioned in Section 94 (1)(a) and 94 (1)(b) of the Act, 2015. Similar view has been taken by the Supreme Court in P. Yuvprakash Vs. State Represented by Inspector of Police 2023 SCC Online (SC) 846.

At this juncture, the learned A.G.A. submits that the charge-sheet has already been submitted against the applicant on 23.08.2022.

In view of above, Investigating Officer is directed to submit an application under Section 173(8) CrPC before the court below seeking permission of the court to conduct further investigation in the matter. After permission is accorded by the court concerned, Investigating Officer shall examine the record of the institution where the prosecutrix had first studied and shall endeavour to discover the date of birth of the prosecutrix as recorded in the records of said institution. It shall be open for the Investigating Officer to collect any other document which may be in consonance with the provisions of Section 94 (1)(a) and 94 (1)(b) of Act, 2015. The said exercise shall be completed within a period of three weeks from today. The copy of the supplementary case diary shall be transmitted to this Court by Investigating Officer through the learned A.G.A. before the next date fixed.

Put up again as fresh on 03.11.2023.

Order Date :- 10.10.2023. "

6. Record shows that in respect of an incident, which is alleged to have occurred on 13.04.2022, a delayed F.I.R. dated 16.04.2022 was lodged by first informant Ramesh Chandra (father of the prosecutrix) and was registered as Case Crime No. 0068 of 2022 under Sections 363, 366 I.P.C. Police Station- Utraov, District- Prayagraj. In the aforesaid F.I.R. applicant Ganga Prasad Yadav has been nominated as solitary named accused.

7. The gravamen of the allegations made in the F.I.R is to the

effect that named accused enticed away the minor daughter of first informant i.e prosecutrix namely X, who is aged about 14 years.

8. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of afore-mentioned case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was recovered on 19.07.2022 Thereafter, statement of prosecutrix was recorded under Section 161 Cr.P.C, copy of which is on record at page 26 of the paper book. In her aforesaid statement, the prosecutrix has not supported the F.I.R. To the contrary, she has stated that she was having love affair with applicant and she is aged about 16 years. The prosecutrix further stated that she herself accompanied applicant and stayed with applicant. Subsequently, prosecutrix was requested for her internal medical examination. However, the same was refused by her. As per medical opinion the prosecutrix is said to be aged about 16 to 18 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 42 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 recovered the certificate issued by the Principal of the Institution where she studied Class IVth. As per said certificate, the date of birth of the prosecutrix is 12.09.2008. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 13.04.2022. As such, prosecutrix was said to be aged about 13 years 7 months and 4 days on the date of occurrence as per the said certificate. 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 fully established in the crime in

question. Accordingly, he submitted the charge sheet dated 23.08.2023 whereby applicant been charge sheeted under Sections 363, 366, 376 I.P.C. and Section 5/6 POCSO Act.

10. At this juncture, the learned A.G.A. submits that subsequent to order dated 10.10.2023, the date of birth of the prosecutrix recorded in instution which was firs attended by her was discovered. The same is 12.09.2008.

11. Learned counsel for applicant submits that though applicant is a named and charge-sheeted accused yet he is liable to be enlarged on bail. The prosecutrix in her statements under Sections 161/164 Cr.P.C. has not supported the F.I.R. As per medical opinion, the prosecutrix is said to be aged about 16-18 years. Since the prosecutrix herself refused to her internal medical examination, therefore, there is no medical evidence to support the charge sheet. On the above premise, the learned counsel for applicant submits that applicant is liable to be enlarged on bail.

12. 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 custody since 20.07.2022. As such, he has undergone more than three months of incarceration. Police report (charge-sheet) 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 crystallised. However, upto this stage, no such incriminating circumstance has emerged 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.

13. Per contra, the learned A.G.A. for State and the learned counsel representing opposite party-2 have vehemently opposed the prayer for bail. They submit that since the applicant is a named as well as charge sheeted accused therefore, he does not deserve any indulgence by this Court. It is then contended that as per medical opinion, the prosecutrix is said to be in between 16 to 18 years of age. The birth of the prosecutrix recorded in the institution, which was first attended by her is 12.09.2008 Occurrence giving rise to present criminal proceedings is alleged to have occurred on 13.04.2022. As such, the prosecutrix was aged about 13 years 7 months and 14 days on the date of occurrence. It is thus contended that no sympathy be shown by this Court in favour of applicant. Prosecutrix is a young girl of tender age. Even if there was consent given by the prosecutrix, the same is immaterial. To buttress his submission he has relied upon the judgement of Supreme court in **X (Minor) Vs. The State of Jharkhand and Another (2022 Live Law (SC) 194**. On the aforesaid premise, it is thus urged that no good ground exists to enlarge the applicant on bail. As such, present applicant for bail is liable to be rejected.

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

15. Having heard the learned counsel for applicant, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant coupled with the fact that objections raised 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 varied submissions urged by the learned counsel for applicant in support of present

application for bail, this Court does not find any sufficient or good ground to enlarge the applicant on bail.

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

17. It is accordingly **rejected**.

Order Date :- 3.11.2023

YK