

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37446 of 2023

Applicant :- Indrajeet Chaudhary @ Majhil Chaudhary

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

Counsel for Applicant :- Virendra Pratap Pal

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Virendra Pratap Pal, 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-Indrajeet Chaudhary @ Majhil Chaudhary seeking his enlargement on bail in Case Crime No. 122 of 2023, under Sections 376 DA IPC, Sections 5G/6 POCSO Act and Section 67 I.T. Act, Police Station-Narahi, District-Ballia during the pendency of trial.

4. Present application came up for orders on 03.10.2023 and this Court passed the following order-

"1. Heard Mr. Virendra Pratap Pal, 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-Indrajeet Chaudhary @ Majhil Chaudhary seeking his enlargement on bail in Case Crime No. 122 of 2023, under Section 376 D.A. IPC, and Sections 5G/6 POCSO Act and Section 67 I.T. Act, Police Station-Narahi, District-Ballia 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 16.08.2023. 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 appears that the applicant has been charge sheeted under the provisions of the POCSO Act, on the basis of date of birth of the prosecutrix mentioned in the certificate issued by the Principal of the institution where the prosecutrix is a student of Class-5.

6. Admittedly, by virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the said document could not be relied upon for determining the age of the prosecutrix as per the date of birth mentioned therein.

7. Learned A.G.A. informs the Court that the charge sheet has already been submitted against the applicant on 02.06.2023.

8. In view of above, the Investigating Officer is directed to submit an application under Section 173(8) Cr.P.C. before court below seeking permission of the Court to conduct further investigation. Thereafter, the Investigating Officer shall endeavour to discover the date of birth of the prosecutrix recorded in the record of the institution first attended by the prosecutrix. The necessary exercise shall be undertaken by the Investigating Officer within a period of three weeks from today. The copy of supplementary case diary shall be transmitted to this Court through the learned A.G.A. before the next date fixed.

9. In view of above, matter shall, accordingly, re-appear as fresh on 31.10.2023"

5. In compliance of above order dated 03.10.2023, the learned A.G.A. has filed an affidavit of compliance in Court today, is taken on record.

6. Record shows that in respect of an incident, which is alleged to have occurred on 14.03.2023, a delayed FIR dated 16.05.2023 was lodged by first informant-Noor Alam (father of the prosecutrix) and was registered as Case Crime No. 122 of 2023, under Sections 376 DA IPC, Sections 3/4 POCSO Act and Section 67 I.T. Act, Police Station-Narahi, District-Ballia. In the aforesaid FIR, 2 persons namely Majhil Chaudhary and Munna Yadav have been nominated as named accused.

7. The gravamen of the allegations made in the FIR is to the effect that named accused dislodged the modesty of the daughter of the first informant i.e. prosecutrix namely X aged about 15 years.

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. wherein the prosecutrix has supported the FIR. The same is on record at page 32 of the paper book. Thereafter, the prosecutrix was requested for her internal medical examination. However, the prosecutrix has refused for her internal medical examination. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 51 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 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 named accused Indrajeet Chaudhary @ Majhil Chaudhary and Garjan Yadav @ Munna Yadav is established in the crime in question. He, accordingly, submitted the charge sheet dated 02.06.2023 whereby aforementioned named accused have been charge sheeted under Sections 376 DA IPC, Sections 5G/6 POCSO Act and Section 67 I.T. Act.

10. Learned counsel for applicant submits that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail.

11. Co-accused Garjan Yadav @ Munna Yadav has already been enlarged on bail vide order dated 17.07.2023 passed in Criminal Misc. Bail Application No. 31017 of 2023 (Garjan Yadav @ Munna Yadav Vs. State of U.P.). For ready reference, the order dated 17.07.2023 is reproduced hereinunder:-

"1. Sri Jhamman Ram, learned AGA for the State apprised the Court that on 03.07.2023 notice has been served to the informant of the case. Despite service of notice, none appeared on behalf of the informant.

2. Heard Sri Shashank Kumar, learned counsel for the applicant and Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 122 of 2023, under Sections 376-DA IPC & 5G/6, 13/14 POCSO Act & 67A I.T. Act, Police Station- Narhi, District- Ballia, during pendency of the trial in the court below.

4. FIR of the present case was lodged against the applicant and co-accused Majhil Chaudhary and according to the FIR, applicant and co-accused Majhil Chaudhary committed rape with the minor daughter of the informant aged about 15 years on 14.03.2023 and they also prepared indecent videographs of the victim and posted the same on social media.

5. Learned counsel for the applicant submitted that entire allegation made against the applicant is totally false and baseless and on the date of incident i.e. on 14.03.2023, applicant was in Jail in connection to a case of Cow Slaughter Act and this fact is evident from the bail granting order of the applicant passed by the court concerned dated 17.03.2023, which has been annexed as Annexure No. 2 to the affidavit, which shows that applicant was

in jail since 26.02.2023 i.e. even before the alleged incident of rape. He further submitted that this fact has also specifically been averred in paragraph no. 11 of the affidavit.

6. He further submitted that although there is allegation that some indecent videographs of the victim were also prepared and posted on social media but no such videographs could be recovered by the Investigating Officer during investigation. He further submitted that except the present matter and above noted case of Cow Slaughter Act, there is no other case pending against the applicant and applicant is in jail in the present matter since 16.05.2023.

7. Per contra, learned AGA although, opposed the prayer for bail but could not dispute the fact that from the bail granting order of the applicant passed by the court concerned, which has been annexed as Annexure No. 2 to the affidavit passed in Case Crime No. 35 of 2023, under Sections- 3/5A/8/5B of Cow Slaughter Act and 3/25 Arms Act, Police Station- Bhanvarkol, District- Ghazipur, it appears that applicant was in jail since 26.02.2023 and was released on bail vide order dated 17.03.2023.

8. I have heard learned counsel for the parties and perused the record of the case.

9. Although, victim of the case appears to be minor aged about 15 years and she in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant and co-accused Majhil Chaudhary but from the perusal of the bail granting order of the applicant passed in another case of Cow Slaughter Act, which has been annexed as Annexure No. 2 to the affidavit, it appears that applicant was in jail in connection to case of Cow Slaughter Act since 26.02.2023 and was released on bail vide order dated 17.03.2023, therefore, it appears that on the date of incident i.e. on 14.03.2023, applicant was in jail, therefore, in my view, applicant is entitled to be released on bail.

10. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

11. Let the applicant- Garjan Yadav @ Munna Yadav be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

12. In case of breach of any of the above condition, the prosecution will be

at liberty to move an application before this Court for cancellation of the bail of the applicant.

13. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial."

12. It is next contended that the role assigned to both the named/charge sheeted accused is common. There is no such distinguishing feature on the basis of which, the case of present applicant could be so distinguished from named/charge sheeted co-accused-Garjan Yadav @ Munna Yadav so as to deny him bail. He, therefore, submits that in view of above and for the facts and reasons recorded in the bail order of co-accused-Garjan Yadav @ Munna Yadav, applicant is also liable to be enlarged on bail.

13. According to the learned counsel for applicant, the prosecutrix is a willing and consenting party. Since the prosecutrix has herself refused to give her consent for internal medical examination, that there is no medical evidence to support the ocular version of the occurrence.

14. 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 16.05.2023. 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 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.

15. Per contra, the learned A.G.A. has opposed the present application 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. No parity can be claimed by the applicant with the bail order of co-accused Garjan Yadav @ Munna Yadav inasmuch as, co-accused Garjan Yadav @ Munna Yadav was enlarged on bail on the ground that co-accused Garjan Yadav @ Munna Yadav was under incarceration on the date of occurrence. It is then contended by the learned A.G.A. that date of birth of the prosecutrix recorded in the institution first attended by her is 10.04.2012. The occurrence giving rise to the present

criminal proceedings is alleged to have occurred on 14.03.2023. As such, the prosecutrix was aged about 10 years, 11 months and 4 days on the date of occurrence. At this juncture, the learned A.G.A. invited the attention of Court to the judgment of Supreme Court in **X (Minor) Vs. The State of Jharkhand and Another 2022 LiveLaw (SC) 194**, and on basis thereof, he contends that, since the prosecutrix is below 16 years of age then in such a circumstance, the consent, if any, of the prosecutrix shall be wholly immaterial. The prosecutrix in her statements recorded under Sections 161/164 Cr.P.C. has remained clear, categorical and consistent, wherein she has not only supported the FIR but also detailed the manner of occurrence. Referring to the judgment of the Supreme Court in **Phool Singh Vs. State of M.P., (2022) 2 SCC 74**, the learned A.G.A. contends that the prosecution of an accused in a case of rape or sexual assault can be maintained even in the absence of medical evidence and on the solitary statement of the prosecutrix. However, in such a circumstance, the statement of the prosecutrix must be of impeccable character. Up to this stage, there is no such material on record on the basis of which, the very credibility or the reliability of the prosecutrix can be doubted. No material has emerged on the record to infer false or malicious prosecution of the applicant either. On the above conspectus, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant.

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

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of accused, accusations made coupled with the fact that the submissions urged by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record, 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.

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

13. It is accordingly **rejected**.

Order Date :- 31.10.2023/Vinay