

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37123 of 2023

Applicant :- Rinku Alias Rajesh

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

Counsel for Applicant :- Vijay Bahadur

Counsel for Opposite Party :- G.A.,Ravi Pandey

Hon'ble Rajeev Misra,J.

Heard Mr. Vijay Bahadur, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ravi Pandey, the learned counsel representing first informant.

Perused the record.

This application for bail has been filed by applicant- Rinku Alias Rajesh seeking his enlargement on bail in Case Crime No. 117 of 2023, under Sections 376 (A,B), 342, 506 IPC and Section 5(N) 6 POCSO Act, Police Station- Sasani, District- Hathra, during the pendency of trial.

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

"Heard Mr. Vijay Bahadur Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ravi Pandey, the learned counsel representing first informant.

This application for bail has been filed by applicant Rinku @ Rajesh seeking his enlargement on bail in Case Crime No.117 of 2023, under Section 376 (A,B), 342, 506 IPC and Section 5 (N)/6 Pocso Act, police station Sasni, district Hathras, during the pendency of trial.

After some arguments, it transpires from the record that the age of the prosecutrix has been determined as per the date of birth mentioned in the Certificate issued by the Head Mistress, Kanya Inter College, Sasni, Hathras wherein the prosecutrix is pursuing Class-IX. As per the said certificate the date of birth of the prosecutrix as recorded in the school record has been mentioned as 18.11.2011.

By virtue of the provisions contained in Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015, the said certificate cannot be relied upon for determining the age of the prosecutrix with reference to her date of birth recorded in the certificate issued by the Principal of an institution. The age of the prosecutrix can be determined only on the basis of date of birth recorded in such document which falls in sub-sections A and B of aforesaid Section. Similar view has been taken by the Supreme Court in P. Yuvprakash

Learned A.G.A. submits that the charge-sheet has already been submitted against the applicant on 18.06.2023.

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. 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 18.10.2023. "

Learned A.G.A. contends that subsequent to above order, 26.9.2023, Investigating Officer has conducted further investigation and transmitted the copy of supplementary case diary to him.

Record shows that in respect of an incident which is alleged to have occurred on 24.10.2023 a belated F.I.R. dated 26.4.2023 was lodged by first informant Ramesh and was registered as Case Crime No. 117 of 2023, under Sections 376 (A,B), 342, 506 IPC and Section 5(N) 6 POCSO Act, Police Station- Sasani, District-Hathra. In the aforesaid F.I.R. applicant 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 (applicant herein) deliberately and forcibly dislodged the modesty of daughter of first informant i.e. the prosecutrix namely X aged about 13 years on 24.4.2023.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of chapter XII Cr.P.C. Thereafter the statement of prosecutrix was recorded under section 161 Cr.P.C, which is on record at page 24 of the paper book. Prosecutrix in her aforesaid statement has not only fully supported the F.I.R but also detailed the manner of occurrence. Thereafter the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor who medically examined her has rejoined her previous statement under section 161 Cr.P.C. However, the Doctor who medically examined the prosecutrix did not find any signs on her body so as to denote commission of deliberate or forceful sexual assault. With regard to private part of

the body of prosecutrix, the Doctor opined as follows:

"Old torn and healed"

Thereafter certain samples were taken from the body of prosecutrix for pathological examination. However, the result of the same are in negative. As per medical opinion, the prosecutrix is said to be aged about 16 years. Ultimately, the statement of the prosecutrix was recorded under section 164 Cr.P.C. The same is on record at page 60 of the paper book. The prosecutrix in her aforesaid statement has re-iterated her previous statement under section 161 Cr.P.C. but with better particulars and details. During course of investigation, Investigating Officer examined first informant and other witness namely, Kukul who is witness of last seen. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of the named accused is established in the crime in question. Accordingly he submitted the charge sheet dated 18.6.2023, whereby applicant has been charge-sheeted under sections 376 (A,B), 342, 506 IPC and Section 5(N) 6 POCSO Act.

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. It is next submitted that prosecutrix and applicant are neighbors and on account of financial dispute, applicant has been falsely implicated. Referring to the medico legal report of the prosecutrix, it is submitted that medical evidence does not support the ocular version of the occurrence as unfolded in the statements of the prosecutrix recorded under sections 161 and 164 Cr.P.C. He, therefore, submits that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedent inasmuch as he has no criminal history to his credit except the present one. Applicant is in jail since 27.4.2023. As such, he has undergone ten months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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. and learned counsel for first informant have opposed the prayer for bail. They submit that since

applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. The prosecutrix in her statement under section 161 Cr.P.C. before the Doctor under section 164 Cr.P.C. has remained clear, categorical and consistent with regard to the manner of occurrence. As such, the aforesaid statements of the prosecutrix are worthy of credit. Attention of the Court was invited to the statement of independent witness, who has supported the F.I.R in his statement under section 161 Cr.P.C.

Learned A.G.A. also contends that the date of birth of the prosecutrix recorded in the institution first attended by her is 18.11.2011. The occurrence giving rise to present criminal proceedings occurred on 24.4.2023. As such, the prosecutrix was aged about 11 years and 5 months on the date of occurrence. However, as per medical opinion, the prosecutrix is said to be aged about 16 years. Referring to the judgement of Supreme Court in **X(Minor) Vs/State of Jharkhand and Anr., 2022 Live Law (SC) 194**. It is urged that since by any standard, the prosecutrix is below 16 years of age, as such, applicant does not deserve any sympathy of this Court. Upto this stage there is nothing on record to show malacious or false prosecution of applicant or the innocence of applicant. The learned A.G.A. thus contends that applicant is not entitled to bail.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that the objections raised by the learned A.G.A. in opposition to present application for bail, could not be dislodged by 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 good ground to enlarge the applicant on bail.

As a result the bail application fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 21.11.2023

Arshad