

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37581 of 2023

Applicant :- Mukesh Pal @ Mukhiya

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

Counsel for Applicant :- Pratibha Vohra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mrs. Pratibha Vohra, the learned counsel for applicant and the learned A.G.A. for State.

Present application for bail came up for orders on 13.10.2023 and this Court passed the following order:-

"Heard Mrs. Pratibha Vohra, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This is a repeat application for bail filed by applicant-Mukesh Pal @ Mukhiya seeking his enlargement on bail in Case Crime No.224 of 2021, under Section 376-D IPC and Section 5/6 Pocso Act, Police Station Asmoli, District Sambhal, during the pendency of trial.

The first bail application of applicant was rejected by this Court by a detailed order dated 09.11.2022 passed in Criminal Misc. Bail Application No.13756 of 2022 (Mukesh Pal @ Mukhiya Vs. State of U.P. and 3 others). For ready reference, the same is extracted herein-under:-

"Heard Mr. Rakesh Kumar, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Mukesh Pal @ Mukhiya seeking his enlargement on bail in Case Crime No. 0224 of 2021, under Section 376 D IPC and Sections 5/6 POCSO Act, Police Station Asmoli, District Sambhal, during the pendency of trail.

Perused the record.

Record shows that in respect of an incident, which is alleged to have occurred two months prior to the date of lodging of F.I.R., first informant/Gyanendra Sharma (father of the prosecutrix) lodged an F.I.R. dated 23.7.2021 which was registered as Case Crime No. 0224 of 2021, under Section 376 D IPC and Sections 5/6 POCSO Act, Police Station Asmoli, District Sambhal. In the aforesaid F.I.R., two persons namely Mukesh Pal @ Mukhiya and Chitra Dev alias Chotu have been nominated as named accused.

Gravamen of the allegations made in the F.I.R. is to the effect that named accused forcibly dislodged the modesty of prosecutrix by committing rape upon her.

After lodging of aforementioned F.I.R., Investigating Officer proceeded with the statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. He examined the first informant and other witnesses under Section 161 Cr. P. C. Witnesses so examined have supported the prosecution story. Thereafter, the statement of prosecutrix was recorded under Section 161 Cr. P. C. The prosecutrix in her aforesaid statement has supported the prosecution story as unfolded in F.I.R.

Subsequent to above, the prosecutrix was requested for medical examination.

The Doctor who examined the prosecutrix, however, did not find any injury on her body so as to denote commission of sexual offence. However, the Doctor upon examination opined as follows:-

Hymen Old Ruptured and Healed

NO MARK OF INJURY ON PRIVATE PART

Certain samples were taken from the body of prosecutrix and sent for pathological examination. However, they show negative results. The U.S.G. report (Deicid) of the prosecutrix recorded as follows:-

A. GESTATIONAL SAC 5 WEEKS 3 DAYS with no clear heart beat. No any well deined foetus

Opinion : Missed abortion

Please calculate clinically U.S.g.

repeated after one week if needed.

As per the medical opinion, the age of the prosecutrix was determined as 16 years. Ultimately, the statement of the prosecutrix was recorded under Section 161 Cr. P. C. In the aforesaid statement, the prosecutrix has not only reiterated her earlier statement but also detailed the manner of occurrence. On the basis of above and other material collected by Investigating Officer, he came to the conclusion that complicity of named accused is estabalish in the crime in question. He, accordingly, submitted the charge sheet dated 15.8.2021, whereby applicant and co-accused Chitra Dev @ Chhotu have been charge sheeted under Section 376 D IPC and Sections 5/6 POCSO Act.

Learned counsel for applicant submits that applicant is innocent. He has been falsely implicated. Allegations made in the F.I.R. are false and concocted. As such, applicant is being falsely prosecuted. It is next contended that as per the prosecution story as unfolded in the F.I.R., the occurrence is alleged to have occurred two months prior to the lodging of the F.I.R. However, the delay in lodging the F.I.R. has not been sufficiently explained. As such, the prosecution of applicant itself cannot be maintained. In support of above, reliance is placed upon paragraph 8 of the judgement of Supreme Court in P. Rajagopal Vs. State of Tamil Nadu, AIR 2019 SC 2866.

According to learned counsel for applicant, the prosecutrix as per medical opinion is aged about 16 years. There is no evidence regarding the time and place of occurrence. As such, the prosecution story is vague.

It is lastly contended that 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 24.7.2021. As such, he has undergone 1 year and 3 months of incarceration. In case, applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial. The charge sheet has already been submitted. As such the evidence sought to be relied upon by the prosecution stands crystallized. Thus custodial arrest of applicant is not absolutely necessary during the course of trial. On the aforesaid premise, the learned counsel for applicant strenuously urged that applicant is liable to be enlarged on bail by this court.

Per contra, the learned A.G.A. has opposed the application for bail. He submits that applicant is a named as well as charge sheeted accused. As such, prima facie applicant is guilty of the offence complained of. With regard to delay in lodging the F.I.R., learned A.G.A. submits that there is no deliberate negligence/laches on the part of first informant in lodging the F.I.R. As per the prosecution story itself, there is no eye witness of the occurrence. The F.I.R. was lodged immediately upon the disclosure made by the prosecutrix. The time period of delay in lodging the F.I.R. when examined in the light of the time period mentioned in Urine Pregnancy Test of prosecutrix clearly explains the delay in lodging the F.I.R. As such it cannot be said that there is any deliberate negligence or laches on the part of first informant in lodging the F.I.R. The prosecutrix in her statements under section 161/164 Cr.P.C. has been consistent and categorical. She has clearly described the place of occurrence as well as the manner of occurrence. There is nothing on record to infer false prosecution of applicant. No mala fide has been alleged against prosecutrix nor any inference of malicious prosecution can be drawn. Contrary to the submission of learned counsel for applicant, the medical evidence supports the prosecution story. He has then invited the attention of the court to the recital contained in the bail rejection order passed by court below i.e. "As per the Ultra sound report and the Urine Pregnancy test (UPT) prosecutrix is having 1/2 month of pregnancy. Aforesaid recital has not been contradicted by learned counsel for applicant. The same is also explicit from the Medical Report of the prosecutrix dated 23.7.2021. On the cumulative strength of above, learned A.G.A. vehemently submits that applicant does not deserve any indulgence by this court.

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

Having heard the learned counsel for applicant, learned A.G.A. for the state, upon perusal of material brought on record, nature of offence, evidence, complicity of the accused and accusation made and coupled with the facts that the oral and medical evidence clearly supports the prosecution story and therefore, prima facie the complicity of applicant in the crime in question being established, but without expressing any opinion on merits of the case, the applicant has not made out a case for bail.

Accordingly, bail application is rejected."

However, upon perusal of the same, the Court finds that photocopy of the original order dated 09.11.2022 containing the signature of the Judge has been appended as Annexure-'1' to the affidavit filed in support of the bail application.

Considering the seriousness of the issue, a thorough inquiry is required to

be conducted in the matter.

The Registrar General of this Court is directed to conduct an inquiry. The said inquiry must be completed within a period of one month from today. The inquiry report shall be communicated to this Court in a sealed cover on the date fixed.

Put up this matter, as fresh, on 16.11.2023. "

Subsequent to above order dated 13.10.2023, the Registrar General of the Court has submitted his report along with enquiry report regarding the enquiry as conducted in compliance of above order dated 13.10.2023. The same is accepted. However, in view of the order dated 08.05.2019 passed by the Registrar General, no further action is warranted in the matter as the photo copies are to be supplied on as is basis.

The solitary ground raised by the learned counsel for applicant in support of this application for bail is that the applicant is under incarceration since 24.7.2021. As such, he has undergone more than 2 years and 3 months of incarceration. The charge sheet was submitted against applicant on 15.8.2021. However, the trial has not yet concluded. Since applicant is in jail, he cannot be held responsible for the delay in the conclusion of trial. She, therefore, contends that in view of above, the applicant is liable to be enlarged on bail.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that as per the recital contained at page 16 of the paper book, the applicant does not deserve any indulgence by this Court. Applicant is guilty of not only dislodging the modesty of the prosecutrix but the prosecutrix came in family way due to act of the applicant. As such, the period of incarceration undergone by the applicant cannot be taken as a ground sufficient enough to enlarge the applicant on 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, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that the 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 period of incarceration undergone by the applicant, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

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

Accordingly, present application for bail is **rejected**.

Order Date :- 16.11.2023

HSM