

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37327 of 2023

Applicant :- Gufran Ahmad

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

Counsel for Applicant :- Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.,Mujiburrahman

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vijay Prakash Chaturvedi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Gufran Ahmad seeking his enlargement on bail in Case Crime No. 153 of 2023 under Sections 376, 323, 325 I.P.C., Sections 3/4 POCSO Act and Sections 3 (2) (V), 3 (2) (Va), 3 (1) (r) SC/ST Act, Police Station-Uska Bazar,, District-Siddharth Nagar, during the pendency of trial.

4. Present application came up for orders on 31.10.2023 and this Court passed the following order:

"1. Heard Mr. Vijay Prakash Chaturvedi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Learned counsel for applicant has filed an amendment application and a supplementary affidavit in Court today, which are taken on record.

4. Office is directed to allot a number to the amendment application.

(Order on Amendment Application)-

1. Heard Mr. Vijay Prakash Chaturvedi, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon perused of record, the Court finds that amendment prayed by applicant is bona-fide. The same is also essential in the interest of justice.

4. Accordingly, the amendment application is allowed.

5. Let necessary amendment in the prayer clause of this application for bail be carried out by the learned counsel for applicant during course of the day.

(Order on Bail Application)-

1. Mr. Vijay Prakash Chaturvedi, 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-Gufran Ahmand seeking his enlargement on bail in Case Crime No. 153 of 2023, under Sections 376, 323, 325 IPC, Sections 3/4 POCSO Act and Sections 3(2)(V), 3(2)(Va), 3(1)(R) SC/ST Act, Police Station-Uska Bazar, District-Siddharth Nagar 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 2 on 22.08.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose this application for bail.

5. After some arguments, it transpires that the age of the prosecutrix has

been determined as per her date of birth recorded in the mark sheet of Class-3 pertaining to the prosecutrix. Subsequently, the Investigating Officer discovered the date of birth of the prosecutrix recorded in the institution first attended by her i.e. 26.03.2007. Prima-facie, the said documents could not be relied upon for determining the age of the prosecutrix as per the date of birth of the prosecutrix mentioned therein.

6. By virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the age of the prosecutrix can be determined only in accordance with her date of birth recorded in any of the documents recognized under Sections 94(2)(i) and 94(2)(ii) of the Act of 2015. Similar view has been taken by the Supreme Court in the case of P. Yuvaprakash Vs. State, 2023 SCC OnLine SC 846.

7. Learned A.G.A. submits that the charge sheet has already been submitted against applicant on 23.06.2023.

8. In view of above, the Investigating Officer is directed to submit an application before court below in terms of Section 173(8) Cr.P.C. before court below seeking the permission of Court to conduct further investigation in the matter. After permission is accorded by the court below, Investigating Officer shall proceed to discover the date of birth of the prosecutrix as per the documents recognized under Sections 94(2)(i) and 94(2)(ii) of the Act of 2015.

9. The necessary exercise shall be undertaken by the Investigating Officer within a period of three weeks from today.

10. The copy of supplementary case diary shall be transmitted by the Investigating Officer to this Court through the learned A.G.A. before the next date fixed.

11. Matter shall, accordingly, re-appear for orders as fresh on 23.11.2023.

Order Date :- 31.10.2023 "

5. Subsequent to above order dated 31.10.2023, the learned A.G.A. has filed an affidavit of Investigating Officer, which is on record.

As per said affidavit, the Investigating Officer collected other material including the statement of the Headmaster of the institution in which the prosecutrix has first attended. As per said statement of the Headmaster, the date of birth of the prosecutrix recorded in the institution which was first attended by her is 23.06.2007. The Investigating Officer has further collected the C.D.R. of the Mobile Number belonging to the Bhabhi of the prosecutrix.

6. Record shows that in respect of an incident which is alleged to have occurred on 09.06.2023, a delayed F.I.R dated 10.06.2023 was lodged by first informant Smt. Sonmati (mother of the prosecutrix) and was registered as Case Crime No. 153 of 2023 under Sections 376 I.P.C., Sections 3/4 POCSO Act and Sections 3 (2) (V) SC/ST Act, Police Station-Uska Bazar,, District-Siddharth Nagar In the aforesaid F.I.R. applicant-Gufran Ahmad 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 aged about 16 years. After the occurrence, the prosecutrix herself returned home and disclosed about the incident to her mother.

8. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. Thereafter, statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record as Annexure SA-1 to the supplementary affidavit dated 28.09.2023. The prosecutrix in her aforesaid statement has supported the F.I.R. She has further stated that she was called by named accused and was forcibly taken away by the named accused

to the bank of River where her modesty was deliberately and forcefully dislodged. The prosecutrix has further stated that she is acquainted with the accused and was in telephonic conversation with him for the last five months. Subsequent to above, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before Doctor, who medically examined her has supported the F.I.R. The Doctor, who medically examined the prosecutrix found following injury on the body of the prosecutrix:

" Neck, Shoulder and Breast-- multiple abrasion present right side of neck and shoulder, swelling and tenderness present on left hand."

9. With regard to private part of the prosecutrix, the Doctor opined as under:

"Hymen - Old torn, healed tags present."

10. As per the medical opinion, the prosecutrix is said to be aged about 19 years. Ultimately, the statement of prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 50 of the paper book. The prosecutrix in her aforesaid statement has supported the F.I.R. inasmuch as she has rejoined her previous statement under Section 161 Cr.P.C. She has further given better particulars and details about the occurrence.

11. The Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C., Witnesses so examined have substantially supported the F.I.R.. During course of investigation, the Investigating Officer recovered the date of birth of the prosecutrix which is 26.03.2007. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 09.06.2023. As such, the prosecutrix was aged about 16 years, 2

months and 13 days on the date of occurrence. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He accordingly submitted the charge sheet dated 23.06.2023 whereby applicant has been charge sheeted under Sections 376, 323, 325 I.P.C., Sections 3/4 POCSO Act and Sections 3 (2) (V), 3 (2) (Va), 3 (1) (r) SC/ST Act.

12. Learned counsel for applicant submits that though applicant is a named and charge-sheeted accused yet he is liable to be enlarged on bail. As per material on record, the prosecutrix is above 16 years of age. Moreover, the prosecutrix was in consensual relationship with the applicant as is clearly established from her statements recorded under Sections 161/164 Cr.P.C. He therefore contends that in view of above, the prosecutrix is a willing and consenting party. As such, applicant is liable to be enlarged on bail.

13. 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 10.06.2023. As such, he has undergone more than six and a half 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 crystallized. However, upto this stage, no such incriminating circumstance has emerged on record 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.

14. Per contra, the learned A.G.A. for State has vehemently

opposed the prayer for bail. He submits that since the applicant is a named and charge sheeted accused therefore, he does not deserve any indulgence by this Court. Attention of the Court was then invited to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. wherein the prosecutrix has clearly stated that her modesty was dislodged by the applicant deliberately and forcefully against the wishes of the prosecutrix. The statement of the prosecutrix is clearly corroborated by the medical evidence i.e. Medico Legal Examination Report of the prosecutrix wherein the Doctor, who medically examined the prosecutrix has clearly noted that the signs found on her body denote commission of deliberate sexual assault upon the prosecutrix. According to the learned A.G.A., the prosecutrix is a young girl aged about 16 years, 2 months and 13 days on the date of occurrence whose modesty was deliberately and forcibly dislodged by the applicant. 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.

16. 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.

17. As a result, present application for bail thus fails and is liable

to be rejected.

18. It is accordingly **rejected**.

Order Date :- 30.11.2023

YK