

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 37874 of 2023

Applicant :- Hariom

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

Counsel for Applicant :- Rajeev Giri, Ashutosh Kumar
Srivastava, Saket Mani Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mrs. Amrita Tripathi, Advocate holding brief of Mr. Rajeev Giri, 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-Hariom seeking his enlargement on bail in Case Crime No. 577 of 2022 under Sections 376 AB, 323, 506 I.P.C. and Sections 5/6 POCSO Act, Police Station-Bilari, District-Moradabad, 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 23.08.2023. 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. Record shows that in respect of an incident, which is alleged to have occurred on 17.12.2022, a prompt F.I.R. dated 17.12.2022 was lodged by first informant Smt. Arti (mother of the prosecutrix) and was registered as Case Crime No. 577 of 2022 under Sections

376 I.P.C. and Sections 5/6 POCSO Act, Police Station-Bilari, District-Moradabad. In the aforesaid F.I.R. applicant-Hariom has been nominated as solitary named accused.

6. The gravamen of the allegations made in the F.I.R is to the effect that on 17.12.2022 at around 6.30 PM, named accused Hariom (applicant herein) deliberately dislodged the modesty of the daughter of the first informant i.e. prosecutrix namely X aged about 13 years.

7. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 21 of the paper book. The prosecutrix in her aforesaid statement, has not only supported the F.I.R. but also detailed the manner of occurrence. Subsequently, prosecutrix was requested for her internal medical examination. However, the Doctor, who examined the prosecutrix, did not find any signs on the body of prosecutrix so as to denote commission of deliberate or forceful sexual assault. However, with regard to the private part of the prosecutrix, the Doctor opined as follows:

"Hymen- Old torn healed".

8. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the result of the same is in negative. As per medical opinion, the prosecutrix is said to be aged about 15 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 31 of the paper book. The prosecutrix in her aforesaid statement has not only reiterated her earlier statement recorded under Section

161 Cr.P.C. but also given better particulars with regard to the occurrence in question. Thereafter, Investigating Officer examined first informant, who is an eye witness of the occurrence, and other witnesses under Section 161 Cr.P.C.. Witnesses so examined have fully supported the F.I.R.. 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 02.01.2023 whereby applicant has been charge-sheeted under Sections 376 AB, 323, 506 I.P.C. and Sections 5/6 POCSO Act.

9. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. She submits that since applicant and the prosecutrix are the residents of the same village, therefore, applicant has been falsely implicated in the crime in question. Attention of the Court was then invited to the Medico Legal Report of the prosecutrix and on the basis thereof, she submits that medical evidence does not support the ocular version of the occurrence as no injury was sustained by the prosecutrix. She therefore contends that present criminal proceedings are not only false but also malicious. As such, applicant is liable to be enlarged on bail.

10. Even otherwise applicant is a man of clean antecedents inasmuch he has no criminal history to his credit except the present one. Applicant is in custody since 18.12.2022. As such, he has under-gone more than ten and a half months of incarceration. The 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. Upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. She therefore contends 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.

11. 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 as well as charge-sheet accused, therefore he does not deserve any indulgence by this Court. He further submits that the prosecutrix in her statements under sections 161/164 has remained clear, categorical and consistent not only with regard to the crime in question but also the manner of the occurrence. He therefore contends that prosecutrix in her aforesaid statement has fully substantiated the F.I.R. The learned A.G.A. further submits that the mother of the prosecutrix, who is first informant and also the eye witness of the occurrence has also supported the F.I.R. Referring to the judgement of apex Court in **Phool Singh Vs. State of Madhya Pradesh, (2022) 2 SCC 74** he submits that prosecution of an accused for an offence 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 clear, categorical, consistent and unambiguous. When the aforesaid test is applied to the statements of prosecutrix, referred to above, it cannot be said that the statements of prosecutrix when examined as a whole do not fall in the category of impeccable evidence. Moreover, as per medical opinion, the prosecutrix is a minor girl aged about 15 years. As such no sympathy be shown by this Court in favour of applicant. 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.

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

13. 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 as per medical opinion the prosecutrix is aged about 15 years, in view of above, no exception can be carved out, in view of law laid down by Apex Court in **X (Minor) (supra)**, though the medical evidence does not fully support the ocular version of the occurrence inasmuch as no signs were found on the body of the prosecutrix so as to denote commission of deliberate sexual assault, but the opinion of the doctor regarding the private part of the prosecutrix is otherwise, but the prosecutrix in her statements under Sections 161/164 Cr.P.C. has fully supported the F.I.R., as such the ratio laid down by Apex Court in **Phool Singh (Supra)** referred to above is clearly attracted, there is nothing on record to infer false or malicious prosecution of applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of present application for bail, but without making any comment on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

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

15. It is accordingly **rejected**.

Order Date :- 7.11.2023
YK