

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38284 of 2023

Applicant :- Mohd Sameer

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

Counsel for Applicant :- Avesh Pratap Singh, Amit Rai

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

Heard Mr. Amit Rai, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Mohd Sameer seeking his enlargement on bail in Case Crime No.387 of 2023, under Sections 363, 342, 328, 376 (3), 506 IPC and Section 3/4 Pocso Act, police station Majhola, district Moradabad, during the pendency of trial.

Perused the record.

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 26.08.2023. 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.

Record shows that in respect of an incident which is alleged to have occurred on 13.05.2023, a delayed first information report dated 30.05.2023 was lodged by first informant/prosecutrix and was registered as Case Crime No.0387 of 2023, under Sections 363, 342, 328, 376 (3), 506, 120-B IPC and Section 3/4 Pocso Act, police station Majhola, district Moradabad. In the aforesaid F.I.R., four persons, namely, Sameer (applicant herein); Shoeb; Nisha and Ateeq have been nominated as named accused.

After aforementioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The statement of the prosecutrix was recorded under Section 161 CrPC, which is on record at page 29 of the paper book. The prosecutrix in her aforesaid statement has clearly stated that she was given cold-drink in which some stupefying substance was mixed on account of which she became unconscious. Thereafter, named accused Mohd. Sameer (applicant herein) is alleged to have dislodged the modesty of the prosecutrix. The prosecutrix was requested for her internal medical examination but the same was refused by her. Ultimately, the statement of the prosecutrix was recorded under Section 164 CrPC, which is on record at page 32 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 CrPC. During the course of investigation, the prosecutrix was medically examined for

determining her age. As per the medical opinion, the prosecutrix is said to be 16 years of age. Investigating Officer on the basis of above and other material collected by him during the course of investigation came to the conclusion that complicity of two of the named accused, namely, Mohd. Sameer (applicant) and Shoeb is fully established in the crime in question. He, accordingly, submitted the charge-sheet dated 15.06.2023, whereby applicant Mohd. Sameer has been charge-sheeted under Sections 363, 342, 328, 376 (3), 506 IPC and Section 3/4 Pocso Act, whereas named accused Shoeb has been charge-sheeted under Sections 363, 342, 328, 376 (3), 506, 120-B IPC and Section 3/4 Pocso Act.

Learned counsel for the applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. Applicant is innocent. He has been falsely implicated in the crime in question. The present case is a case of false and malicious prosecution and therefore the applicant is liable to be enlarged on bail. The ocular version of the occurrence is not supported by medical evidence as no medical evidence is on record because the prosecutrix has refused for her medical examination. On the above premise, the learned counsel for applicant submits that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 03.06.2023. As such, he has undergone more than four months of incarceration. The police report in terms of Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged by the learned counsel for applicant 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 investigation/trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this court. He submits that the prosecutrix in her statements under Section 161/164 CrPC has clearly implicated the applicant for deliberately dislodging her modesty therefore, the prosecutrix is not a willing and consenting party. Referring to the judgement of the Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74**, he contends that conviction of an accused for an offence of rape and sexual assault can be maintained 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 and consistent. When the aforesaid test is applied to the facts of the present case, it is apparent that the prosecutrix has remained categorical and consistent in her statements recorded under Sections 161/164 CrPC in so far as the complicity of the applicant in the crime in question is concerned. Therefore, the same do not suffer

from the vice of inconsistency, contradiction or exaggeration. As such, there is nothing on record to discredit the same. Up to this stage, no material has been placed before the court on the basis of which the innocence of the applicant could be inferred or it could be concluded that the present case is a case of false and malicious prosecution. To buttress his submission, the learned A.G.A. has referred to the judgement of the Supreme Court in **X (Minor) Vs. State of Jharkhand 2022 Livelaw (SC) 194**. According to the learned A.G.A. since the prosecutrix is below 18 years of age, therefore no sympathy be shown by this Court in favour of applicant. As such, the bail application is liable to be rejected.

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, coupled with the fact that as per the medical opinion the prosecutrix is below 18 years of age, the prosecutrix in her statements under Section 161/164 CrPC has clearly implicated the applicant in the crime in question, in view of the law laid down by the Apex Court in **X (Minor) Vs. State of Jharkhand 2022 Livelaw (SC) 194** no sympathy can be shown by this court in favour of applicant, in view of the judgement of the Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74**, the prosecution of an accused for an offence of rape and sexual assault can be maintained in the absence of medical evidence and on the solitary statement of the prosecutrix, the statements of the prosecutrix referred to above when examined as a whole fall in the category of impeccable evidence, up to this stage there is no such material on record on the basis of which false or malicious prosecution of the applicant can be inferred, no material has been brought on record to infer the innocence of applicant therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

This application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 31.10.2023.

Rks.