

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39125 of 2023

Applicant :- Pravesh Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Balendra Kumar Singh, Anil Kumar Dubey

Counsel for Opposite Party :- G.A., Zafeer Ahmad

Hon'ble Rajeev Misra, J.

1. Heard Mr. Balendra Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Zafeer Ahmad the learned counsel representing first informant opposite party-2.
2. Perused the record.
3. This application for bail has been filed by applicant **Pravesh Singh** seeking his enlargement on bail in Case Crime No.529 of 2023, under Sections 376, 323, 504, 420, 467, 468 471 I.P.C., and 3/4 of POCSO Act, Police Station Civil Lines, District Moradabad during the pendency of trial.
4. Record shows that an F.I.R dated 17.06.2023 was lodged by first informant/prosecutrix namely X and was registered as Case No.529 of 2023, under Sections 376, 323, 504, 420, 467, 468 471 I.P.C., and 3/4 of POCSO Act, Police Station Civil Lines, District Moradabad. In the aforesaid F.I.R. applicant Pravesh Singh and two others namely Veer Singh and Smt. Kusum Lata have already been nominated as named accused.
5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Pravesh Singh by extending false promise of marriage deliberately and repeatedly maintained physical relations with the prosecutrix for last five years. Ultimately, the applicant is alleged to have resiled from the promise so extended to the prosecutrix.
6. After above-mentioned F.I.R. was lodged, Investigating Officer proceed with statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. The statement of the prosecutrix was recorded under Section 161 Cr.P.C. The same is on

record at page 27 of the paper book. The prosecutrix in her aforesaid statement has clearly supported the F.I.R. Thereafter, the prosecutrix was requested for internal medical examination. The doctor who medically examined the prosecutrix did not find any injury on her body so as to denote the commission of deliberate sexual assault. However, with regard to private part of the prosecutrix, the doctor has opined as follows:

1. No evidence of injury seen over ext body surface.

2. Hymen old ruaptured

7. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the result of the same are in negative. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. The same is on record at page 38 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C. During course of investigation, Investigating Officer recorded the High School Certificate of the prosecutrix wherein her date of birth has been recorded as 25.12.2004. The F.I.R. giving rise to the present criminal proceedings was lodged on 17.06.2023. As such, the prosecutrix was said to be aged about 18 years 6 months 12 days. On the basis of above and other material collected by the Investigating Officer he came to the conclusion that the complicity of applicant is established in the crime in question. He accordingly, submitted the charge sheet dated 30.07.2023 whereby the applicant has been charge sheeted under Sections 376, 323, 504, 420, 467, 468 471 I.P.C., and 3/4 of POCSO Act, Police Station Civil Lines, District Moradabad.

8. Learned counsel for applicant submits that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Admittedly, on the date of lodging of the F.I.R. prosecutrix was as she was aged about 18 years. On the above premise, he therefore submits that no offence under the POCSO Act can be said to have been committed by applicant. With reference to the statement of the prosecutrix recorded under Sections 161/164 Cr.P.C., it is contended by the learned counsel for applicant that the prosecutrix is a willing and consenting party. As such, it cannot be said that the applicant deliberately or forcibly dislodge the modesty of the prosecutrix.

9. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 30.07.2023. As such, he has undergone 3 months of

incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. 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 cooperate with the trial.

10. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that elder sister of the prosecutrix is married to the elder brother of applicant. As such, prosecutrix and the applicant are related to each other as applicant is Devar of the Bhabhi of the applicant. It is then contended that the prosecutrix in her statement referred to above has been consistent to the extent that physical relations were established between the parties for a period of five years, wherein the applicant dislodge the modesty of the prosecutrix on the ground that he shall solemnize marriage with the prosecutrix. Ultimately, the applicant has resiled from the promise extended to the prosecutrix. The prosecutrix is a young girl whose modesty has been repeatedly dislodged by the applicant. On the above premise, it is thus urged that no sympathy be shown by this Court in favour of applicant. Applicant being a named and charge sheeted accused, therefore, no indulgence be granted by this Court in favour of applicant.

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

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, complicity of applicant and accusation made, the nature and gravity of offence coupled with the fact that the prosecutrix in her statement under Sections 161/164 Cr.P.C. has fully supported the F.I.R., the prosecutrix has consistently stated that the applicant and the prosecutrix were in physical relationship for five years on the ground that the applicant had extended promise of marriage to the prosecutrix, ultimately he is alleged to have resiled from the promise so extended to the prosecutrix, the judgments of the Supreme Court in

1. Pramod Suryabhan Pawar Vs. State of Maharashtra (2019) 9 SCC 608.

2. Sonu @ Shubash Kumar Vs. State of U.P. 2021 SCC Online

SC 181.

3. Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108.

4. Deepak Mandar Pawar Vs. State of Maharashtra 2022 LiveLaw (SC) 649.

5. Naim Ahmad Vs. State (NCT of Delhi) 2023 SCC Online SC 89, therefore, irrespective of the varied submission urged by the learned counsel for applicant in support of the present applicant for bail, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

13. In view of above, the bail application fails and is liable to be rejected.

14. It is, accordingly **rejected**.

Order Date :- 31.10.2023

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