

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40083 of 2023

Applicant :- Kutubuddin

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

Counsel for Applicant :- Ram Ashish Yadav

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

Hon'ble Rajeev Misra,J.

Heard Subhash Chandra Yadav, Advocate, holding brief of Mr. Ram Ashish Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Kaushlendra, the learned counsel for first informant.

Perused the record.

This application for bail has been filed by applicant Kutubuddin seeking his enlargement on bail in Case Crime No. 392 of 2022, under Sections 363, 366, 376 IPC and Section 3(2) 5 SC/ST Act, Section 5/6, 7, 8 POCSO Act, Police Station- Line Bazar, District Jaunpur, during the pendency of trial.

Record shows that, in respect of an incident which is alleged to have occurred on 17.9.2022, a belated F.I.R. dated 21.9.2022 was lodged by first informant- Vikram Sonker and was registered as Case Crime No. 392 of 2022, under Sections 363, 366, 376 IPC and Section 3(2) 5 SC/ST Act, Section 5/6, 7, 8 POCSO Act, Police Station- Line Bazar, District Jaunpur. In the aforesaid F.I.R. applicant-Kutubuddin has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused enticed away sister of first informant i.e. the prosecutrix aged about 15 years.

After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was recovered on 1.11.2022. Thereafter the statement of the prosecutrix was recorded under section 161 Cr.P.C. The prosecutrix in her said statement has not supported the F.I.R. To the contrary the prosecutrix has stated that she was in fascination with applicant and she herself accompanied the applicant and visited various places. Thereafter the prosecutrix was requested for her internal medical examination. The Doctor who examined the prosecutrix did not find any such injury on her person so as to denote commission of deliberate or forceful sexual assault. However, with regard to private part of the prosecutrix, the Doctor opined as follows:

"Old Healed raptured C Severe"

As per medical report, the prosecutrix is said to be aged about 18 years.. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record at page 40 of the paper book. The prosecutrix in her aforesaid statement has departed from her previous statement and has stated that her modesty was dislodged by applicant. During course of investigation, Investigating Officer recovered School Leaving certificate of the prosecutrix wherein her date of birth is recorded as 20.1.2005. The incident giving rise to present criminal proceedings occurred on 17.9.2022. As such, prosecutrix was aged about 17 years 8 months and 17 days on the date of occurrence. Investigating Officer further examined first informant and other witness under section 161 Cr.P.C. Witness so examined have substantially supported the F.I.R. On the basis of above and other material collected by Investigating Officer, during course of investigation he came to the conclusion that complicity of applicant is established in the crime in question. He, accordingly submitted the charge sheet dated 18.12.2022, whereby applicant has been charge sheeted under sections 363, 366, 376 IPC and Section 3(2) 5 SC/ST Act, Section 5/6, 7, 8 POCSO Act.

Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. Referring to the statement of the prosecutrix as recorded under section 161 Cr.P.C. he submits that prosecutrix is a willing and consenting party. As per medico legal examination report of the prosecutrix, no signs were found on her body so as to denote commission of deliberate or forceful sexual assault. Prosecutrix herself accompanied the applicant to various places. As such, she is a willing and consenting party. As such, applicant is liable to be enlarged on bail.

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 jail since 3.11.2022. As such, he has undergone more than one year of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, 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 co-operate with the trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since applicant is a named and charge sheeted accused therefore, he does not deserve any indulgence by this Court. Referring to the scheme of Code, they submit that statement recorded under section 164 has to be given credence over the statement recorded under section 161 Cr.P.C. The prosecutrix in her subsequent statement under section 164 Cr.P.C. has fully supported the F.I.R. by stating that her modesty was deliberately and forcibly

dislodged by applicant. Admittedly prosecutrix is a minor below 18 years of age. As such, provisions of POCSO Act are attracted. With regard to private part of the prosecutrix, medical evidence clearly corroborates the ocular version of the occurrence as unfolded in the statement of the prosecutrix under section 164 Cr.P.C. Prosecutrix is a young girl aged about 17 years and 8 months, whose modesty has been dislodged by applicant. As such, no sympathy be shown in favour of applicant.

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, evidence, nature and gravity of offence as well as complicity of applicant, accusation made 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 learned counsel for applicant, therefore irrespective of the varied submissions urged by learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good ground or sufficient to enlarge the applicant on bail.

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

It is accordingly **rejected**.

Order Date :- 29.11.2023

Arshad