

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 38852 of 2023

**Applicant :-** Kapil @ Dhonghi @ Suryaveer

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

**Counsel for Applicant :-** Ramesh Chandra Pal

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Ramesh Chandra Pal, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. The learned A.G.A. has filed an affidavit of compliance in Court today which is taken on record.

4. Instant application for bail has been filed by applicant-Kapil @ Dhonghi @ Suryaveer seeking his enlargement on bail in Case Crime No. 97 of 2023 under Sections 363, 366, 376 I.P.C. and Sections 3/4, POCSO Act, Police Station-Chandaus, District-Aligarh, during the pendency of trial.

5. Present application for bail came for order on 06.10.2023 and this Court passed the following order:-

*" Heard Mr. Shad Khan, Advocate, holding brief of Mr. R.C. Pal, the learned counsel for applicant and the learned A.G.A. for State.*

*Perused the record.*

*This application for bail has been filed by the applicant Kapil @ Dhonghi @ Suryaveer seeking his enlargement on bail in Case Crime No. 97 of 2023, under Section 363, 366 and 376 IPC and Sections 3/4 POCSO Act, P.S.*

*Chandaus, District Aligarh during the pendency of trial.*

*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 4. However, in spite of service of notice, no one has put in appearance on behalf of first informant opposite party 4 to oppose this application for bail.*

*After some arguments, it transpires that the age of the prosecutrix has been determined as per her date of birth mentioned in the certificate issued by the Principal of the School last attended by the prosecutrix, copy of which is on record at page 22 of the paper book. The said document cannot be relied upon for determining the age of the prosecutrix, as per the date of birth mentioned therein on account 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 as per the date of birth recorded in the document recognized under Section 94 (1) (a) and 94 (1) (b) of Section 94 of the Juvenile Justice (Care and Protection of Children) Act 2015.*

*Learned A.G.A. submits that the charge sheet has already been submitted against applicant on 8.5.2023. In view of above, Investigating Officer is directed to submit an application before the Court below in terms of Section 173 (8) Cr. P. C. seeking permission of the Court to conduct further investigation. After permission is granted by Court below, Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her. It shall be open to the Investigating Officer to discover any other document as per the provisions contained in Section 94 of (1) (a) and 94 (1) (b) of the aforementioned Act regarding the date of birth of the prosecutrix. The necessary exercise shall be completed within a period of three weeks from today. Copy of the supplementary case diary shall be transmitted by the Investigating Officer to this Court through the learned A.G.A. before the next date fixed.*

*Matter shall, accordingly, re-appear as fresh on 1.11,2023.*

*Order Date :- 6.10.2023 "*

6. Record shows that in respect of an incident which is alleged to have been occurred on 22.04.2023 a prompt F.I.R. dated 22.04.2022 was lodged by first informant Neetoo Chaudhary (Father of the prosecutrix) and was registered as Case Crime No.97 of 2023 under Sections 363, 366, 376 I.P.C. and Sections 3/4, POCSO Act, Police Station-Chandaus, District-Aligarh. In the aforesaid one person Kishan Singh 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 Kishan Singh is alleged to have enticed away the daughter of first informant i.e. prosecutrix namely X, aged about 17 years..

8. Learned counsel for applicant contends that applicant is innocent. He is not named in the F.I.R. However the complicity of the applicant in the crime in the crime in question has emerged in the statement of the prosecutrix recorded under Section 164 Cr.P.C., copy of which is on record at page 20 of the paper book. With reference to above, it is submitted by the learned counsel for applicant that the prosecutrix is a willing and consenting party. Further more the prosecutrix has solemnized marriage with applicant. Consequently, the criminality if any committed by applicant stands washed of. As per record of the institution, which was first attended by prosecutrix her date of birth is 08.10.2002. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 20.04.2023. As such prosecutrix was more than 20 years of age on the date of occurrence. Consequently she is major. On the above premise, it is thus urged that applicant is liable to be enlarged on bail.

9. 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 23.04.2023. As such, he has undergone more than six months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant therefore the entire evidence sought to relied upon by the prosecution against applicant stands crystalized. Upto this stage, no such circumstance has merged on the basis of which it can be said that the custodial arrest of applicant is absolutely necessary during the pendency of trial. He therefore 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

10. 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. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

11. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, 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 record of the institution which was first attended by the prosecutrix, she is major. as per statement of the prosecutrix under Section 164 Cr.P.C. she is a willing and consenting party, the prosecutrix has solemnized marriage with applicant therefore no offence under Section 376 I.P.C. and 3/4 POCSO Act can be said to have been committed by applicant, the clean antecedents of applicant, the period of

incarceration undergone by applicant, 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, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to present applicant for bail, but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

12. Accordingly, present application for bail is **allowed**.

13. Let the applicant-**Kapil @ Dhonghi @ Suryaveer** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

14. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to

cancel the bail of applicant and send him to prison

**Order Date :- 1.11.2023**

**YK**