

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40066 of 2023

Applicant :- Neeraj Chaudhary

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

Counsel for Applicant :- Shweta Singh, Rakesh Kumar Maurya

Counsel for Opposite Party :- G.A.

Connected with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41693 of 2023

Applicant :- Rohit

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

Counsel for Applicant :- Shyam Shankar Shukla, Sadashiv Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Rakesh Kumar Maurya, the learned counsel for applicant- Neeraj Chaudhary, Mr. Sadashiv Tripathi, the learned counsel for applicant- Rohit and the learned A.G.A. for State.

2. At the very outset, learned A.G.A. submits that notice of present application for bail has been served upon first informant/opposite party-4 on 6.9.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant/opposite party-4 to oppose the present applications for bail.

3. Perused the record.

4. These applications for bail have been filed by applicants- Neeraj Chaudhary and Rohit seeking their enlargement on bail in Case Crime No. 219 of 2023 under Sections 376, 328 IPC, Section 3/4 POCSO Act and Section 3 (ii) (V) SC/ST Act, Police Station- Tappal District- Aligarh during the pendency of trial.

5. Record shows that in respect of an incident which is alleged to have occurred in between 27.5.2023 to 28.5.2023, a belated F.I.R. dated 29.5.2023 was lodged by first informant Soham and was

registered as Case Crime No. 219 of 2023 under Sections 376, 328 IPC, Sections 3/4 POCSO Act and Section 3 (ii) (V) SC/ST Act, Police Station- Tappal District- Aligarh. In the aforesaid F.I.R., one person namely, Neeraj Chaudhary has been nominated as solitary named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Neeraj Chaudhary extended false promise of marriage to the prosecutrix. On the said promise, aforesaid named accused deliberately and forcibly dislodged the modesty of the prosecutrix.

7. After aforesaid F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned 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. by Investigating Officer. Same is on record at page 19 of the paper book. Prosecutrix in her aforesaid statement has supported the F.I.R. Complicity of another accused has also surfaced in the crime in question in the aforesaid statement. Thereafter the prosecutrix was requested for her medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has rejoined her earlier statement under section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix, did not find any signs on her body so as to denote commission of deliberate sexual assault. With regard to private part of the prosecutrix, the Doctor opined as follows:

"teared hymen"

8. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the results of the same are in negative. Ultimately, the statements of the prosecutrix was recorded under section 164 Cr.P.C., which is on record at page 55 of the paper book. The prosecutrix in her aforesaid statement has not only rejoined her earlier statement under section 161 Cr.P.C. but has given material particulars of the occurrence. The complicity of another accused Rohit has again come to surface. The aforesaid accused produced false I.D. on the basis of which, room was booked in the Hotel. Ultimately, during course of investigation, Investigating Officer recovered the High School Certificate of the prosecutrix wherein her date of birth is recorded as 5.3.2007. The occurrence giving rise to present criminal proceedings occurred on 27.5.2023. As such, prosecutrix was aged about 16 years, 2 months and 25 days on the date of occurrence. On the basis of above and other material collected by Investigating

Officer, during course of investigation he came to the conclusion that complicity of applicants is established in the crime in question. He, accordingly submitted the charge sheet dated 30.7.2023, whereby both the accused i.e. applicants herein have been charge sheeted under sections 376, 328 IPC and Section 3/4 POCSO Act and Section 3 (ii) (V) SC/ST Act.

9. Learned counsel for applicants submit that though the applicants are named as well as charge sheeted accused, yet they are liable to be enlarged on bail. The prosecutrix was more than 16 years of age, as per statements of prosecutrix before the Doctor, who medically examined her, under section 164 Cr.P.C., it is apparent that the prosecutrix is a willing and consenting party. Medical evidence does not support the ocular version, inasmuch as no signs were found on the body of prosecutrix so as to denote commission of deliberate sexual assault.

10. Even otherwise, applicant-Rohit is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one whereas, applicant-Neeraj Chaudhary has criminal history of 3 cases. Applicant--Neeraj Chaudhary is in jail since 30.05.2023 and applicant-Rohit is in jail since 03.06.2023. As such, they have undergone substantial period of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants. As such, the entire evidence sought to be relied upon by prosecution against applicants stands crystallized. However, upto this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicants. It is thus urged that applicants are liable to be enlarged on bail. In case the applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

11. Learned counsel for applicant- Rohit submits that applicant-Rohit is not named in the F.I.R., though applicant-Rohit is a charge sheeted accused yet he is liable to be enlarged on bail. With reference to material on record, he submits that there is no allegations with regard to commission of sexual assault upon prosecutrix against this applicant. As such, case of present applicant is distinguishable from co-accused Neeraj Chaudhary, therefore, applicant-Rohit is liable to be enlarged on bail.

12. Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since applicants are charge sheeted accused, therefore they do not deserve any indulgence by this Court. With reference to the statements of the prosecutrix, the learned A.G.A. contends that the prosecutrix in her aforesaid

statements has remained clear, categorical and consistent, as per which the complicity of both the applicants are fully established in the crime in question. Applicant Neeraj Chaudhary, made a false promise of marriage to the prosecutrix and on basis thereof dislodged her modesty. With reference to above, learned A.G.A. has invited the attention of Court to the judgements of Supreme Court in **(i) Sonu @ Subhash Kumar Vs. State of U.P, 2021 SCC Online SC 181 (ii) Pramod Suryabhan Pawar Vs. State of Maharashtra, 2019 SCC Online SC 1073 (iii) Maheswar Tigga Vs. State of Jarkhand, (2020) 10 SCC 108 (iv) Mandar Deepak Pawar VS. State of Maharashtra and Another, 2022 Live Law (SC) 649 and Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC Online SC 89.** As per the statement of the prosecutrix recorded under section 161 Cr.P.C., it is of applicant- Rohit who had produced a forged I.D. to get the room booked in the hotel. As such, complicity of applicant- Rohit is established in the crime in question. The prosecutrix is a young girl aged about 16 years and two months, whose modesty has been dislodged. As such, no sympathy be shown by this Court in favour of applicants.

13. When confronted with above, learned counsel for applicants could not overcome the same.

14. Having heard the learned counsel for applicants, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that prosecutrix is young girl aged about 16 years and two months on the date of occurrence, the prosecutrix in her statement under section 161 Cr.P.C. before the Doctor and under section 164 Cr.P.C. has remained clear, categorical and consistent, as per above, the complicity of present applicants is fully established in the crime in question, applicant-Neeraj is a married man and father of two children, yet he indulged in adultery, as such, promise of applicant to prosecutrix is prima-facie false, complicity of co-accused Rohit is fully established as per recital contained in statement of the prosecutrix under section 161 Cr.P.C., the medical evidence clearly supports the ocular version of the occurrence, up to this stage, there is nothing on record to infer innocence of the applicant-Rohit or false and malicious prosecution of applicant-Neeraj Chaudhary, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicants on bail.

15. As a result, the present applications for bail fail and are liable to be rejected.

16. They are, accordingly, rejected.

Order Date :- 16.10.2023/Arshad