

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39640 of 2023

Applicant :- Lal Babu Rajbhar

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

Counsel for Applicant :- Afshan Shafaut

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Ms. Afshan Shafaut, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Lal Babu Rajbhar seeking his enlargement on bail in Case Crime No. 024 of 2021 under Section 376 I.P.C. and Sections 5m/6 POCSO Act, Police Station-Bankata, District-Deoria, during the pendency of trial.

4. Present application for bail came up for orders on 09.10.2023 and this Court passed the following order:

"Heard Miss Afshan Shafaut, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Lal Babu Rajbhar seeking his enlargement on bail in Case Crime No. 024 of 2021, under Section 376 IPC and Sections 5m/6 POCSO Act. P.S. Bankata, District Deoria, during the pendency of trial.

After some arguments, it transpires that the age of the prosecutrix has been determined with regard to her date of birth mentioned in the certificate issued by the Principal of the institution, wherein the prosecutrix was studying.

By virtue of the provisions contained in Section 94 of Juvenile Justice Care and Protection of Children) Act, 2015, the age of the child can be determined only in accordance with her date of birth recorded in any of the documents recognized under Section 94 (1) (a), 94 (1) (b) of the Act 2015.

Learned A.G.A. contends that charge sheet has already been submitted against applicant.

In view of above, the Investigating Officer is directed to submit an application before Court below in terms of Section 173 (8) Cr. P. C. seeking permission of the Court to conduct further investigation. After permission is granted, Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her. The necessary exercise shall be completed within 3 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 for orders as fresh on 12.11.2023.

Order Date :- 9.10.2023 "

5. Subsequent to above order dated 09.10.2023, the Investigating Officer conducted further investigation and collected the date of birth of the prosecutrix recorded in the institution first attended by her. Accordingly, the learned A.G.A. has filed an affidavit in Court today, which is taken on record. As per document occurring at page 7 of the affidavit filed today, the date of the prosecutrix recorded in the institution first attended by her is 29.04.2011. Occurrence giving rise to present criminal proceedings is alleged to have occurred on 07.02.2021. As such, the prosecutrix was aged about 9 years, 9 months and 8 days on the date of occurrence.

6. Record shows that in respect of an incident, which is alleged to have occurred on 07.02.2021 a prompt F.I.R. dated 07.02.2021 was lodged by first informant Shanker Gupta (father of the prosecutrix) and was registered as Case Crime No. 024 of 2021 under Section 376 I.P.C. and Sections 5/6 POCSO Act, Police Station-Bankata, District-Deoria. In the aforesaid F.I.R. applicant-Lal Babu Rajbhar has been nominated as solitary named accused

7. The gravamen of the allegations made in the F.I.R. is to the effect that name accused Lal Babu Rajbhar i.e. applicant herein deliberately and forcefully dislodged the modesty of the daughter of first informant i.e. prosecutrix, namely X, aged about 9 years.

8. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. Accordingly, statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 19 of the paper book. The prosecutrix in her aforesaid statement has not only supported the F.I.R. but has also detailed the manner of occurrence.. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before Doctor, who medically examined her, has reiterated her previous statement under Section 161 Cr.P.C. The Doctor, who medically examined the prosecutrix, however, did not find any injury on her body so as to denote commission of deliberate and forceful sexual assault upon the prosecutrix. However, with regard to private part of the prosecutrix the Doctor has opined as follows:

Fourchette & Introitus- Mild redness, no bleeding seen.

Hymen-Intact

9. Certain samples were taken from the body of the prosecutrix for pathological examination. However, copy of the supplementary medico legal report has not been brought on record. As per medical opinion, the prosecutrix is said to be aged about 8 years. Ultimately, the statement of prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 46 of the paper book wherein the prosecutrix has not only supported the F.I.R. but also clearly elaborated the manner of occurrence.

10. During course of investigation, Investigating officer examined

first informant and other witnesses including the mother of the prosecutrix, who reached the place of occurrence on the shout raised by the prosecutrix under Section 161 Cr.P.C. they have substantially supported the F.I.R. During course of investigation, Investigating Office recovered the certificate issued by the Principal of the institution where the prosecutrix was studying As per the said certificate, the date of birth of the prosecutrix as recorded in the school record is 29.04.2011. On the above premise, Investigating Officer concluded that the prosecutrix was aged about 9 years, 9 months and 8 days on the date of occurrence. Accordingly, Investigating Officer, submitted the charge sheet dated 16.04.2021 against applicant whereby applicant has been charge sheeted under Sections 376 I.P.C. and Sections 5m/6 POCSO Act.

11. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. Medical evidence does not support the ocular version of the occurrence. It is then contended that allegations made in the F.I.R. are false and concocted. Applicant has been falsely implicated in the crime in question. To buttress her submission, she has relied upon the averments made in paragraph 8 of the affidavit filed in support of present application for bail.

12. 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 08.02.2021. As such he has undergone more than two years and nine months of incarceration. 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 crystallised. Upto this stage, no such circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, the learned counsel for applicant 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.

13. Per contra, the learned A.G.A. has 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. The prosecutrix is a young girl of tender age, aged about 9 years, 9 months and 8 days on the date of occurrence. The prosecutrix, in her statement under Section 161 Cr.P.C., before the Doctor and in her statement under Section 164 Cr.P.C. has not only supported the F.I.R. but also detailed the manner of occurrence. Upto this stage, there is no such material on record, on the basis of which, it can be inferred that the prosecution of applicant in the crime in question is false or malicious. No document has emerged on the record to establish the innocence of the applicant either. According to the learned A.G.A. since the prosecutrix is below 13 years of age, therefore, the provisions of Section 5m of the POCSO Act stand established. As applicant is guilty of committing aggravated sexual assault, therefore, he does not deserve any sympathy of this Court. To buttress his submission he has relied upon the judgement of Apex Court in **X (Minor) Vs. The State of Jharkhand and Another (2022 Live Law (SC) 194**. He therefore submits that no good or sufficient ground exists to enlarge the applicant on bail. As such present applicant for bail is liable to be rejected by this Court.

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

15. Having heard the learned counsel for applicant, the learned A.G.A. for State, 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 objections raised by the learned A.G.A. in opposition to present application for bail could not be dislodged by learned counsel for applicant, therefore, irrespective of the varied submissions raised by the learned counsel for applicant in support of present application for bail, this Court does not find any sufficient or good ground to enlarge the applicant on bail.

16. As a result, present application for bail fails and is liable to be rejected.

17. It is accordingly **rejected**.

Order Date :- 23.11.2023

YK