

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39560 of 2023

Applicant :- Monu @ Karamchandra

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

Counsel for Applicant :- Jalaj Singh, Ashutosh Kumar Singh

Counsel for Opposite Party :- G.A., Aarushi Khare, Salman Ahmad

and

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 32404 of 2023

Applicant :- Guddi

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

Counsel for Applicant :- Azad Khan, Amit Kumar Srivastava

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

Hon'ble Rajeev Misra, J.

1. Heard Mr. Ashutosh Kumar Singh, the learned counsel for applicant-Monu @ Karamchandra, Mr. Azad Khan the learned counsel for applicant-Guddi, the learned A.G.A. for State, Mr. Salman Ahmad, the learned counsel for first informant and Ms. Aarushi Khare, the learned counsel representing opposite party-3.

2. Perused the Court.

3. These applications for bail have been filed by applicants-Monu @ Karamchandra and Guddi seeking their enlargement on bail in Case Crime No. 117 of 2023 under Sections 342, 376D, 506 I.P.C. and Sections 5G/6 POCSO Act, Police Station-Kalpi, District-Jalaun, during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 14.04.2023, a delayed F.I.R. dated 15.04.2023

was lodged by first informant Harimohan (father of the prosecutrix) and was registered as Case Crime No. 117 of 2023 under Sections 376D, 342, 506 I.P.C. and Sections 5G/6 POCSO Act, Police Station-Kalpi, District- Jalaun. In the aforesaid F.I.R. four persons namely Monu, Rajkumar, Shiboo and Guddi have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R is to the effect that named accused Sonu deliberately dislodged the modesty of the minor daughter of the first informant i.e. prosecutrix aged about 16 years.

6. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of afore-mentioned case crime number in terms of Chapter XII Cr.P.C. Thereafter, the statement of prosecutrix was recorded under Section 161 Cr.P.C, copy of which is on record at page 58 of the paper book. In her aforesaid statement, the prosecutrix has supported the F.I.R. Subsequently, prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has rejoined her previous statement under Section 161 Cr.P.C. The Doctor, who medically examined the prosecutrix, did not find any signs on the body of prosecutrix so as to denote commission of deliberate or forceful sexual assault. However with regard to private part of the prosecutrix, the Doctor opined as under:

"Hymen-Torn."

7. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. copy of which is on record at page 60 of the paper book. In her aforesaid statement, the prosecutrix has

reiterated her previous statement under Section 161 Cr.P.C. referred to above. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have supported the F.I.R. On the basis of above and other material material collected by Investigating Officer including statements of witnesses recorded by him during the course of investigation he came to the conclusion that complicity of all the named accused is fully established in the crime in question. He accordingly submitted the charge-sheet dated 19.05.2023 whereby and whereundr the named accused have been charge sheeted as under:

- i. Monu @ Karamchandra and Sheebu have been charge sheeted under Sections 376DA, 342, 506 I.P.C. and Sections 5G/6 POCSO Act
- ii. Guddi has been charge sheeted under Sections 376DA, 342, 506/109 I.P.C. and Sections 17/6 POCSO Act
- iii. Rajkumar has been declared juvenile.As such his case is separated.

8. Mr. Azad Khan, the learned counsel for applicant-Guddi submits that though applicant is a named and charge-sheeted accused yet he is liable to be enlarged on bail. He submits that the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C are not worthy of reliance. Attention of the Court was invited to the provisions contained in proviso to Section 437 Cr.P.C. and on basis thereof, he submits that since the applicant is a lady therefore she is liable to be enlarged on bail. Even otherwise, applicant-Guddi is a lady of clean antecedents inasmuch as she has no criminal history to her credit except the present one. Applicant is in custody since 17.04.2023. As such, she has undergone more than six 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. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he submits that applicant is liable to be enlarged on bail. In case the applicant is enlarged on bail, she shall not misuse the liberty of bail and shall co-operate with the trial.

9. Mr. Ashutosh Kumar Singh, the learned counsel for applicant-Monu @ Karamchandra submits that though applicant is a named and charge-sheeted accused yet he is liable to be enlarged on bail. He submits that the prosecutrix was in relation with the applicant. Therefore, the prosecutrix is a willing and consenting party. As per medical evidence, prosecutrix is said to be aged about 16 years. On the above premise, he therefore submits that applicant is liable to be enlarged on bail.

10. Even otherwise, applicant-Monu @ Karamchandra 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 27.04.2023. As such, he has undergone more than six 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. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he 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.

11. Per contra, the learned A.G.A. for State, the learned counsel

representing first informant, the learned counsel representing opposite party-3 have vehemently opposed the prayer for bail. They submit that since the applicants are named and charge sheeted accused therefore, they do not deserve any indulgence by this Court. Prosecutrix in her statement under Sections 161/164 Cr.P.C has fully supported the F.I.R. Upto this stage there is nothing on record to infer false or malicious prosecution of the applicants or the innocence of the applicants. It is thus urged that no sympathy be shown by this court in favour of applicants.

12. Having heard the learned counsel for applicants, the learned A.G.A. for State, the learned counsel for first informant/opposite party-2 the learned counsel representing opposite party-3, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that since applicant-Guddi is a lady (Tai of the prosecutrix), she is therefore entitled to the benefit of the provisions contained in proviso to Section 437 Cr.P.C, medical evidence does not support the ocular version of the occurrence i.e. deliberate and forceful sexual assault was committed upon the prosecutrix by applicant-Monu, the prosecutrix appears to be in relationship with Monu @ Karamchandra, the prosecutrix in her statements recorded under Sections 161/164 Cr.P.C. has supported the F.I.R. but her statements are not worthy of credence as the house in which the occurrence is alleged to have occurred was not an ordinary home but a marriage was to take place therein, therefore in all probability number of persons must have been present, the clean antecedents of applicants, the period of incarceration undergone, the 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 applicants stands crystallised, yet in spite of above, the learned A.G.A., the learned counsel representing first informant and the learned counsel representing opposite party-3 could not point out any such circumstance from the record necessitating the custodial arrest of the applicant during the course of trial, therefore, irrespective of the objections raised by the learned A.G.A., the learned counsel for first informant, the learned counsel representing opposite party-3 in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicants have made out a case for bail.

13. Accordingly, present applications for bail are **allowed**.

14. Let the applicants- **Monu @ Karamchandra and Guddi** involved in aforesaid case crime number be released on bail on their 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) Applicants will not tamper with prosecution evidence.

(ii) Applicants 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) Applicants will not indulge in any unlawful activities.

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

15. 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 applicants and send them to prison.

Order Date :- 9.11.2023

YK