

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 39831 of 2023

Applicant :- Raja

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

Counsel for Applicant :- Deepak Yadav, Rajesh Yadav, Vandana Rai

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Rajesh Yadav, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Instant bail application has been filed by applicant-Raja seeking his enlargement on bail in Case Crime No. 274 of 2023 under Section 376 I.P.C. and Sections 3/4 POCSO Act, Police Station- Gandhi Park, District- Aligarh during pendency of the trial.

4. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon first informant/opposite party-2 on 05.09.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant/opposite party-2 to oppose the present application for bail.

5. Record shows that in respect of an incident which is alleged to have occurred on 22.05.2023, a prompt F.I.R dated 22.05.2023 was lodged by first informant Harprasad (father of the prosecutrix) and was registered as Case Crime No.274 of 2023 under Section 376 I.P.C. and Sections 3/4 POCSO Act, Police Station- Gandhi Park, District- Aligarh . In the aforesaid F.I.R. applicant-Raja 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-Raja (applicant herein) deliberately and forcefully dislodged the modesty of the prosecutrix i.e daughter of the first informant.

7. After registration of aforesaid F.I.R., Investigating officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The statement of prosecutrix was recorded under Section 161 Cr.P.C. by Investigating Officer. Same is on record at page 42 of the paper book. Prosecutrix in her aforesaid statement has supported the prosecution story as unfolded in the F.I.R.. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her has partially supported the F.I.R.. However, the Doctor who medically examined the prosecutrix did not find any injury on her body so as to denote commission of deliberate sexual assault. However, clothes of the prosecutrix was seized and sent FSL Laboratory. Certain samples were taken from the body of the prosecutrix for pathological examination. However, the result of the same is in negative. As per FSL report of articles of the prosecutrix male sperm was found on the same. Copy of the same is on record at page 40 of the paper book.

8. During course of investigation, Investigation Officer examined first informant and other witnesses under Section 161 Cr.P.C. The first informant has not only supported the F.I.R. but has also detailed the scene of crime at the time when the prosecutrix was recovered alongwith the applicant. There is no document in-consonance with the provisions of Section 94 of the Juvenile

Justice (Care and Protection of Children) Act 2015 regarding the date of birth of the prosecutrix. Therefore of necessity, the age of the prosecutrix has to be determined as per medical opinion. According to the medical opinion, the prosecutrix is said to be aged about 16 years. On the basis of above and other material collected by Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. He accordingly submitted the charge-sheet dated 20.06.2023 whereby applicant has been charge sheeted under Sections 376 I.P.C. and Sections 3/4 POCSO Act

9. Learned counsel for applicant submits that though applicant is a named and charge-sheeted accused yet he is liable to be enlarged on bail. Attention of the Court was then invited to the statement of the prosecutrix recorded under Sections 161/164 Cr.P.C. With reference to the case diary, the learned counsel for applicant submits that prosecutions in her subsequent statement under Section 164 Cr.P.C. has not rejoined her previous statement under Section 161 Cr.P.C. It is then contended that the alleged occurrence is alleged to have occurred on the first floor of the house even when the parents and brother of the prosecutrix were present. He therefore submits that present case is a case of false and malicious implication.

10. 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 23.05.2023. As such he has undergone more than five 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 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.

11. Per contra, the learned A.G.A. has opposed the present application 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. According to learned A.G.A. as per FSL report, innocence of applicant is clearly belied. As per medical opinion, the prosecutrix is aged about 16 years. Learned A.G.A. has thus referred to the judgement of Supreme court in **X (Minor) Vs. The State of Jharkhand and Another (2022 Live Law (SC) 194**. Learned A.G.A. further submits that even in absence of medical evidence, conviction can be maintained under Section 376 I.P.C.on the basis of sole testimony of the occurrence. Referring to the statements of prosecutrix under Sections 161/164 Cr.P.C., he submits that the prosecutrix has substantially supported the prosecution story. On the aforesaid premise, the learned A.G.A. contends that applicant does not deserve any sympathy of this Court. Therefore, present applicant for bail is liable to be rejected.

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

13. 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 prosecutrix in her statement under Section 161 Cr.P.C. has fully supported the F.I.R., father of the prosecutrix, who is an eye witness of the

occurrence has also supported the F.I.R., the FSL report, copy of which is on record at page 40 of the paper book clearly proves that sexual assault was committed upon the prosecutrix, as per medical opinion prosecutrix is a young girl below 16 years of age, the judgement of Apex Court in **X (Minor) (supra)** therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of present application for bail this Court does not find any good or sufficient ground to enlarge the applicant on bail.

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

15. It is accordingly **rejected**.

Order Date :- 28.10.2023

YK