

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40075 of 2023

Applicant :- Jamshed Ahmad

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

Counsel for Applicant :- Kirtikar Pande

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Kirtikar Pande, 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 Jamshed Ahmad seeking his enlargement on bail in Case Crime No. 166 of 2023, under Sections 363, 366, 376, 506 IPC and Sections 3/4 POCSO Act, P.S. Sikandarpur, District Ballia, 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 2 on 17.9.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant opposite party 2 to oppose this application for bail.

Record shows that in respect of an incident which is alleged to have occurred on 13.5.2023, a delayed F.I.R. dated 17.5.2023 was lodged by first informant Videshwar Rajbhar, (father of the prosecutrix) and was registered as Case Crime No. 166 of 2023, under Sections 363, 366, 376, 506 IPC and Sections 3/4 POCSO Act, P.S. Sikandarpur, District Ballia. In the aforesaid F.I.R., applicant Jamshed Ahmad has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused enticed away the minor daughter of the first informant i.e. prosecutrix namely X on 13.5.2023 and thereafter dropped the daughter of the first informant on the outskirts of the village on 16.5.2023.

After above mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr. P. C. The statement of the prosecutrix was recorded under Section 161 Cr. P. C. Same is on record at page 36 of the paper book. The prosecutrix in her aforesaid statement has detailed the entire occurrence. The prosecutrix has further stated that the applicant fraudulently solemnized marriage with her and by playing fraud and deceit dislodged her modesty. Thereafter, the 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 recorded under Section 161 Cr. P. C. However, the Doctor, who examined the prosecutrix did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. With regard to the private part of the prosecutrix, the Doctor opined as follows:-

"Old Ruptured Hymen, No injury seen"

Certain samples were taken from the body of the prosecutrix for pathological examination. However, the result of the same is in negative. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr. P. C., which is on record at page 84 of the paper book. The prosecutrix in her aforesaid statement has reiterated her previous statement recorded under Section 161 Cr. P. C., in so far as fraud and deceit is alleged to have been played by applicant in marrying the prosecutrix and dislodging her modesty. 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. Investigating Officer recovered the High School Certificate of the prosecutrix, wherein her date of birth is recorded as 10.8.2005. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 13.5.2022. As such, the prosecutrix was aged about 17 years, 8 months and 3 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 applicant is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 28.6.2023, whereby applicant has been charge sheeted under Sections 363, 366, 376, 506 IPC and Section 3/4 POCSO Act.

Learned counsel for applicant contends that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. With reference to the statements of the prosecutrix recorded under Sections 161/164 Cr. P. C., he submits

that since applicant has solemnized marriage with the prosecutrix, the criminality, if any, committed by the applicant stands washed of. The prosecutrix was aged about 17 years, 8 months and 3 days on the date of occurrence. She is a willing and consenting party. As such, no offence as complained of can be said to have been committed by applicant.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 18.05.2023. As such, he has undergone more than 5 months of incarceration. The police report in terms of Section 173 (2) Cr. P. C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized upto this stage. However, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He, therefore, submits that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail, he shall not misuse the liberty of bail and shall co-operate with the trial.

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 sheeted accused, therefore, he does not deserve any indulgence by this Court. The learned A.G.A. submits that the prosecutrix in her statement under Section 164 Cr. P. C. has categorically stated that applicant has performed marriage with the applicant by playing fraud and deceit. Applicant is Muslim by religion, whereas the prosecutrix is Hindu. There is no averment in the affidavit filed in support of the present application for bail with regard to the manner, in which the alleged marriage was solemnized and which of the parties converted. Prima facie, the marriage of the parties is void and cannot be relied upon to infer innocence of applicant. He, therefore, submits that since applicant has dislodged the modesty of the prosecutrix who is a young girl aged about 17 years, 8 months and 3 days on the date of occurrence, by playing fraud and deceit. therefore, no sympathy be shown by this Court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of material brought on record, evidence, complicity of the accused, accusation made, nature and gravity of offence and coupled with the fact that the submissions urged by the learned A.G.A. in opposition to present application for bail

could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of 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 applicant on bail.

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

It is, accordingly, **rejected**.

Order Date :- 28.10.2023

HSM