

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40367 of 2023

Applicant :- Ramnarayan

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

Counsel for Applicant :- Mahendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Mahendra Singh, 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-Ramnarayan seeking his enlargement on bail in Case Crime No. 506 of 2020 under Sections 363, 366A, 376AB, I.P.C. and 5 J (ii)/6 POCSO Act, Police Station-Wazirganj, District-Budaun, during the pendency of trial.

4. Present application for bail came up for orderss on 18.10.2023 and this Court passed the following order:

"1. Heard Mr. Mahendra Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application for bail has been filed by applicant-Ramnarayan seeking his enlargement on bail in Case Crime No. 506 of 2020, under Sections 363, 366A, 376AB IPC and Sections 5J(ii)/6 POCSO Act, Police Station-Wazirganj, District-Budaun during the pendency of trial.

4. 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 02.09.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose this application for bail.

5. After some arguments, it transpires that the age of the prosecutrix has been determined as per her date of birth recorded in the Scholar Register/Transfer Certificate, copy of which is on record at page 53 of the paper book.

6. Learned counsel for applicant has, however, disputed the sanctity of the said document on the ground that the said certificate relates to another girl namely Lovely whereas the named of the prosecutrix is Priya. To buttress his submission, he has invited the attention of the Court to the Ration Card, the photo copy of which is on record at page 51 of the paper book, wherein distinct and clear entry has been made with regard to the family members of the prosecutrix.

7. Learned A.G.A. submits that the charge sheet has already been submitted against applicant on 18.07.2022. Considering the fact that the prosecutrix has solemnized marriage with the applicant and the prosecutrix is in family way, but here being no medical opinion with regard to the age of the prosecutrix, therefore, the Chief Medical Officer, Budaun is directed to conduct ossification test/radiological test to determine the age of the prosecutrix.

8. The necessary exercise shall be completed within a period of two weeks from today.

9. The requisite medical determination of age report shall be submitted before this Court by means of a compliance affidavit.

10. Matter shall, accordingly, re-appear for orders as fresh on 06.11.2023.

Order Date :- 18.10.2023 "

5. The learned A.G.A. has filed an affidavit of the Investigating Officer in court today bring on record the additional document collected by Investigating Officer subsequent to above order dated 18.10.2023.

6. Record shows that in respect of an incident, which is alleged to have occurred on 14.12.2020, a delayed F.I.R. dated 24.12.2023 was lodged by first informant Charan Singh (father of the prosecutrix) and was registered as Case Crime No. 506 of 2020 under Sections 363, 366A, 376AB, 323, 506 I.P.C. and 5 J (ii)/6 POCSO Act, Police Station-Wazirganj, District-Budaun. In the aforesaid F. I.R., two persons namely Ramnarayan (applicant herein) and Karan have been nominated as named accused.

7. The gravamen of the allegations made in the F.I.R is to the effect that named accused Ramnarayan (applicant herein) enticed away the minor daughter of first informant namely X, aged about 15 years.

8. After aforementioned F.I.R. was lodged, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was recovered on 26.06.2022. Thereafter statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 33 of the paper book. The prosecutrix in her aforesaid statement has not supported the F.I.R.. To the contrary, the prosecutrix has stated that she herself went to the applicant and thereafter accompanied to Punjab where they lived together as husband and wife. Subsequently, the prosecutrix solemnized marriage with applicant, Thereafter, the prosecutrix was requested for her internal medical examined. The prosecutrix in her statement before Doctor, who medically examined her, has reiterated her previous statement recorded under Section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix did not find any external injury on the body of the prosecutrix so as to denote the commission of deliberate or forceful sexual assault. However, with regard to the private part of the prosecutrix, the Doctor opined as under:

"Hyman -Pregnancy changes seen."

9. Ultra Sound test of the prosecutrix was conducted to ascertain her biological condition. As per ultra sound report, copy of which is on record at page 46 of the paper book, the prosecutrix was in family way and the age of foetus was determined to be 24 weeks and six days.

10. Thereafter the statement of prosecutrix was recorded under Section 164 Cr.P.C., copy of which is on record at page 49 of the paper book. The prosecutrix in her aforesaid statement has reiterated his previous statement under Section 161 cr.P.C.

11. During course of investigation, Investigating Officer recovered the Transfer Certificate of the prosecutrix, copy of which is on record at page 53 of the paper book. As per aforesaid certificate, the date of birth of the prosecutrix as recorded in the School record is 01.07.2011. The occurrence giving rise to present criminal proceedings has occurred on 14.12.2020. As such, on the date of incident, the prosecutrix was aged about 9 years, 5 months and 13 days. The Investigating Officer further examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. On the basis of above, he came to the conclusion that complicity of applicant is established in the crime in question. He accordingly submitted the charge-sheet dated 18.07.2022 whereby applicant has been charge sheeted under Sections 363, 366A, 376AB, I.P.C. and 5 J (ii)/6 POCSO Act.

12. Learned counsel for applicant submits that though applicant is a named as well as charge-cheeted accused yet he is liable to be enlarged on bail. Referring to the statement of the prosecutrix recorded under Sectiona 161/164 Cr.P.C. he submits that prosecutrix is a willing and consenting party. Since prosecutrix herself came to the applicant and accompanied him to Punjab threfore, no offence under Section 363 I.P.C. can be said to have been committed by applicant inasmuch as neither the prosecutrix was enticed away, abducted nor kidnapped by the applicant for committing sexual assault upon her. It is next contended that the

prosecutrix in her aforementioned statements, has categorically stated that she has solemnized marriage with applicant. It is the case of applicant that parties came into cohabitation as husband and wife. On account of above, the prosecutrix came in family way, which fact is clearly established from the USG report, copy of which is on record at page 46 of the paper book. It is then submitted that ultimately the prosecutrix has delivered a baby child. The said fact has been categorically stated in paragraph 26 of the paper book which has not been denied by the learned A.G.A. With reference to above, the learned counsel for applicant submits that as per material on record, though the prosecutrix was below 18 years of age on the date of her marriage with applicant but simply on that ground the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11 (2) of the Hindu Marriage Act. However upto this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void. As such, applicant is liable to be enlarged on bail. In case the applicant is not enlarged on bail, a happy family shall stand broken. To buttress his submission, he has relied upon the judgement of Apex Court in **Suhani and another Vs. State of U.P. and others 2018 SCC OnLine SC 781.**

13. 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 29.06.2022. As such, he has undergone more than one year and four and a half months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution

against applicants stands crystallised. Upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, the learned counsel for applicants thus 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..

14. Per contra, the learned A.G.A. has opposed the prayer for bail. According to the learned A.G.A., as per record of the institution first attended by prosecutrix, her date of birth is 01.07.2011. As such, prosecutrix is a minor girl of tender age i.e. 9 years. On the above premise, the learned A.G.A. submits that no sympathy be shown by this Court in favour of applicant. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

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 the prosecutrix is a willing and consenting party, she herself came to the applicant and accompanied him to Punjab therefore, no offence under Section 363 I.P.C. can be said to have been committed by applicant inasmuch as neither the prosecutrix was enticed away, abducted nor kidnapped by the applicant for committing sexual assault upon her, the prosecutrix has categorically stated that she has solemnized marriage with applicant, on account of which, the prosecutrix came in family way, which fact is clearly established from the USG report, copy of which is on record at page 46 of the paper book, as per material

on record, though the prosecutrix was below 18 years of age on the date of her marriage with applicant but simply on that ground the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11 (2) of the Hindu Marriage Act. However upto this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void, the period of incarceration undergone, clean antecedents of applicant, police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted therefore the entire evidence sought to relied upon by the prosecution against applicants stands crystallised, yet in spite of above the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, ultimately the prosecutrix has delivered a baby which fact has been categorically pleaded in paragraph 26 of the applicant filed in support of the present application for bail, therefore irrespective of the objections raised by the learned A.G.A. in opposition to present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

16. Accordingly, present application for bail is **allowed**.

17. Let the applicant-**Ramnarayan** involved in aforesaid case crime number be released on bail on his 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) Applicant will not tamper with prosecution evidence.

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

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

18. 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 applicant and send him to prison

Order Date :- 24.11.2023

YK