

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40352 of 2023

Applicant :- Aditya @ Anurag

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

Counsel for Applicant :- Shobhit Yadav, Manish Patel

Counsel for Opposite Party :- G.A., Dharendra Kumar Verma, Renu Swarnkar

Hon'ble Rajeev Misra, J.

Heard Mr. Shobhit Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Dharendra Kumar Verma, the learned counsel representing first informant.

This application for bail has been filed by applicant Aditya @ Anurag seeking his enlargement on bail in Case Crime No.459 of 2023, under Sections 363, 366, 376 IPC and Section 3/4 POCsO Act, police station Chhibramau, district Kannauj, during the pendency of trial.

Perused the record.

The present application for bail came up for orders on 11.10.2023 and this Court passed the following order :-

"1. Heard Mr. Sobhit Yadav, 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-Aditya @Anurag seeking his enlargement on bail in Case Crime No. 459 of 2023, under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act, Police Station-Chhibramau, District-Kannauj 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 13.09.2023. 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 Scholar Register of the institution last attended by the prosecutrix. As per the said entry, the date of birth of the prosecutrix is said to be 03.07.2007. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 30.06.2023. As such, the prosecutrix was aged about 15 years, 11 months and 27 days.

6. By virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, no reliance could have been placed upon the Scholar Register for determining the age of the prosecutrix as per the date of birth of the prosecutrix recorded therein. Similar view has been taken by the Supreme Court in the case of P. Yuvaprakash Vs. State, 2023 SCC

7. Learned A.G.A. submits that the charge sheet has already been submitted against applicant on 18.07.2023.

8. 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 the permission of Court to conduct further investigation in the matter. After permission has been accorded by the court below, Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her.

9. The necessary exercise shall be completed by the Investigating Officer within a period of three weeks from today.

10. The copy of supplementary case diary shall be transmitted by the Investigating Officer to this Court through the learned A.G.A. before the next date fixed.

11. Matter shall, accordingly, re-appear for orders as fresh on 03.11.2023."

Pursuant to the above order dated 11.10.2023, the learned A.G.A. has filed a compliance affidavit in Court today, which is taken on record. With reference to above, the learned A.G.A. contends that subsequent to the order dated 11.10.2023, Investigating Officer conducted further investigation. The date of birth of the prosecutrix recorded in the institution first attended by her is 03.07.2007. As such, the prosecutrix was aged 15 years 11 months and 27 days on the date of occurrence.

Record shows that in respect of an incident which is alleged to have occurred on 30.06.2023, a delayed F.I.R. dated 02.07.2023 was lodged by first informant, namely, Chandra Pal (father of the prosecutrix) and was registered as Case Crime No.0459 of 2023, under Section 363 IPC, police station Chhibramau, district Kannauj. In the aforesaid F.I.R., one unknown person has been arraigned as solitary accused.

The gravamen of the allegations made in the F.I.R. dated 02.07.2023 is to the effect that the daughter of the first informant i.e. prosecutrix namely X aged about 16 years went missing since 30.06.2023.

Subsequent to above F.I.R., the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The prosecutrix was recovered on 06.07.2023. Thereafter, statements of the prosecutrix were recorded under Sections 161/164 CrPC, which are on record at pages 28 and 35 of the paper book respectively, wherein she has not supported the F.I.R. To the contrary, the prosecutrix has stated that she was in acquaintance with applicant for the last five months and has subsequently solemnized marriage with the applicant. On the above premise, the learned counsel for applicant contends

that the criminality, if any, alleged against the applicant stands washed of on account of aforesaid fact. It is next contended by the learned counsel for applicant that it is an undisputed fact that the prosecutrix has solemnized marriage with the applicant. Though the prosecutrix was below 18 years of age (15 years 11 months and 27 days) on the date of her marriage with the applicant, but simply on the above 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, 1955. However, up to this stage, nothing has emerged on record to show that the prosecutrix has initiated any proceeding for declaration of her marriage with the applicant as void. Attention of the Court was then invited to the averments made in paragraph 19 of the affidavit filed in support of the bail application and on basis thereof it is urged by the learned counsel for applicant that since the prosecutrix is the legally wedded wife of the applicant therefore applicant is ready to maintain her. He therefore submits that in case applicant is not enlarged on bail, a happy family shall stand broken.

Even otherwise, the applicant is a man of clean antecedents having no criminal history to his credit except the present one. He is in jail since 06.07.2023. As such, he has undergone more than five months of incarceration. The police report under Section 173 (2) CrPC i.e. charge-sheet has already been submitted against the applicant therefore, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged on the basis of which it can be said that custodial arrest of applicant is absolutely necessary during the pendency of trial. It is thus urged that the 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.

Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. Learned A.G.A. submits that since the applicant is a charge-sheeted accused, inasmuch as, the charge-sheet has been submitted against applicant on 18.07.2023 therefore, he does not deserve any indulgence by this court. He further submits that since the prosecutrix is below 18 years of age therefore, her consent, if any, is immaterial. He, therefore, submits that no sympathy be shown by this Court in favour of the 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.

Having heard the learned counsel for applicant, the learned

A.G.A. for State, the learned counsel representing first informant, 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 prosecutrix in her statements recorded under Sections 161/164 CrPC has not supported the F.I.R., to the contrary the prosecutrix has stated that she was in acquaintance with the applicant for the last five months i.e. prior to the lodging of the FIR and has subsequently solemnized marriage with the applicant, on account of above the criminality if any committed by the applicant stands washed off, though the prosecutrix was below 18 years of age on the date of her marriage with the applicant but simply on that account 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, 1955, up to this stage no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void, in spite of the fact that the charge-sheet has been submitted against applicant and therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized, yet the learned A.G.A. nor the learned counsel for first informant could point out any such incriminating circumstance from the record necessitating the custodial arrest of the applicant during the pendency of trial, the judgement of Supreme Court in **Sumit Subhashchandra Gangwal and Another Vs. State of Maharashtra and Another 2023 LiveLaw (SC) 373 (paragraph 5)**, the clean antecedents of the applicant, the period of incarceration undergone therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail but, without making any comments on the merit of the case, the applicant has made out a case for bail.

Accordingly, the bail application is **allowed**.

Let the applicant **Aditya alias Anurag**, involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.
- (ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In

case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under section 82 Cr.P.C., may be issued and if applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under section 174-A I.P.C.

(iv) The applicant shall remain present, in person, before the trial court on dates fixed for (1) opening of the case, (2) framing of charge and (3) recording of statement under section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

(v) The trial court may make all possible efforts/endeavour and try to conclude the trial within a period of one year after the release of the applicant.

However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

Order Date :- 1.12.2023.

Rks.