

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41307 of 2023

Applicant :- Anuj

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

Counsel for Applicant :- Manish Kumar Tripathi, Arpit Pal

Counsel for Opposite Party :- G.A., Anil Kuamr Mishra

Hon'ble Rajeev Misra, J.

Heard Mr. Manish Kumar Tripathi, the learned counsel for applicant, the learned A.G.A. for State and Mr. Anil Kumar Mishra, the learned counsel for first informant/opposite party-3.

Perused the record.

This application for bail has been filed by applicant- Anuj seeking his enlargement on bail in Case Crime No. 43 of 2023, under Sections 452, 506, 376(3) IPC and Section 3/4 POCSO Act., Police Station- Saroorpur, District Meerut, during the pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 2.3.2023, a belated F.I.R. dated 3.3.2023 was lodged by first informant- Vinod (father of the prosecutrix) and was registered as Case Crime No. 43 of 2023, under Sections 452, 506, 376(3) IPC and Section 3/4 POCSO Act., Police Station- Saroorpur, District Meerut. In the aforesaid F.I.R. applicant has been nominated as named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused is alleged to have entered the house of first informant on 2.3.2023 and thereafter dislodged the modesty of the daughter of the first informant i.e. prosecutrix namely X by molesting her.

After aforesaid F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. Thereafter, the statement of the prosecutrix was recorded under section 161 Cr.P.C. which is on record at page 31 of the paper book. The prosecutrix in her aforesaid statement has not only supported the F.I.R. but has also detailed the manner of occurrence. Thereafter the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before

the Doctor who medically examined her has again supported the F.I.R. and has also detailed the manner of occurrence but with certain variation. The Doctor who medically examined the prosecutrix however, did not find any injury on her person so as to denote commission of deliberate or forceful sexual assault. However, with regard to private part of the prosecutrix, the Doctor opined as follows:

"Old torn healed"

Certain samples were taken from the body of the prosecutrix for pathological examination. However, the copy of the supplementary medico legal report of the prosecutrix has not been brought on record. Ultimately, the statement of the prosecutrix was recorded under section 164 Cr.P.C. Prosecutrix in her aforesaid statement has again rejoined her earlier statement recorded under section 161 Cr.P.C to the effect that her modesty was deliberately dislodged by applicant. During course of investigation, Investigating Officer recovered the certificate issued by Principal of the institution, wherein the prosecutrix had studied up to Class-VIII. As per the said certificate, the date of birth of the prosecutrix is recorded as 20.2.2009. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 2.3.2023. As such, on the date of occurrence, prosecutrix was aged about 14 years. Investigating Officer further examined the 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 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. He, accordingly submitted the charge sheet dated 14.4.2023, whereby applicant has been charge sheeted under sections 452, 506, 376(3) IPC and Section 3/4 POCSO Act.

Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. Applicant is innocent. He has been falsely implicated in above mentioned case crime number. He next submits that though F.I.R. is not the encyclopedia of the prosecution case but it must disclose the basic prosecution case. To buttress his submission, the learned counsel for applicant has relied upon following judgements of Supreme Court **Manoj and Ors. Vs. State of Maharashtra (1999) 4 SCC 268; Subhash Kumar Vs. State of Uttarakhand (2009) 6 SCC 641; Achhar Singh Vs. S.O. M.P. (2021) 5 SCC 543**. It is then contended that prosecutrix in her statement under section 161 Cr.P.C. and 164 Cr.P.C. has departed from the prosecution story as unfolded in the F.I.R. The departure so made in aforesaid

statements of the prosecutrix remains unexplained up to this stage. The medical evidence does not support the ocular version of the occurrence, inasmuch as no signs were found on the body of the prosecutrix disclosing commission of deliberate or forceful sexual assault. He, therefore, contends that applicant is liable to be enlarged on bail.

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 jail since 1.4.2023. As such, he has undergone approximately eleven months of incarceration. 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 prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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 trial.

Per contra, the learned A.G.A. and learned counsel for first informant have vehemently opposed the prayed for bail. They submit that admittedly, the prosecutrix is a young girl of tender age i.e. 14 years. The prosecutrix in her statements under section 161/164 Cr.P.C. has remained consistent that applicant deliberately and forcibly dislodged her modesty. In view of the judgement of Supreme Court in **X(Minor) Vs/State of Jharkhand and Anr., 2022 Live Law (SC) 194**, he submits that since prosecutrix is below 14 years of age, therefore, her consent, if any, is immaterial and further no indulgence by granted by this Court in favour of applicant. Learned **A.G.A** has then referred to the judgement of the Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74**. On basis thereof he contends that prosecution of an accused for an offence of rape or sexual assault can be maintained in the absence of medical evidence and on the solitary statement of the prosecutrix. However, in such a circumstance the statement of the prosecutrix should be clear, categorical and consistent i.e. devoid of ambiguity. When the statement of the prosecutrix referred to above disclosing commission of deliberate or forceful sexual assault are taken as a whole and examined in the light of above, it is apparent that the prosecutrix has remained consistent to the effect that her modesty was dislodged by applicant. As such, the same do not suffer from the vice of embellishment, contradiction or exaggeration. As such, they are impeccable character. Furthermore, there is nothing on record to show false or malicious prosecution of applicant or to infer the

innocence of applicant. As such 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, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that objections raised by the learned A.G.A. in opposition to the present application bail could not be dislodged by learned counsel for applicant, therefore irrespective of the varied submissions urged by learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

In view of above, the application fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 29.11.2023

Arshad