

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41082 of 2023

Applicant :- Ajay Verma

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

Counsel for Applicant :- Ashok Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Ashok Kumar Maurya, the learned counsel for applicant and the learned A.G.A. for State.

This repeat application for bail has been filed by the applicant Ajay Verma seeking his enlargement on bail in Case Crime No. 56 of 2023, under Sections 363, 366-A, 376 (3) IPC and 3/4 and Sections 3/4 (2) POCSO Act, P.S. Nagra, District Ballia during the pendency of the trial.

At the very outset, the learned A.G.A. contends that notice of present application for bail has been served upon first informant opposite party 2 on 8.9.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant opposite party 2 to oppose present application for bail.

The first bail application of applicant was rejected by this Court by a detailed order dated 25.7.2023 passed in Criminal Misc. Bail Application No. 28802 of 2023 (Ajay Verma Vs. State of U.P. and 3 others. For ready reference, same is extracted herein under:-

"Heard Mr. Ashok Kumar Maurya, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Ajay Verma seeking his enlargement on bail in Case Crime No.56 of 2023, under Sections 363, 366-A and 376(3) IPC and Section 3/4(2) Pocso Act, police station Nagra, 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 the first informant-opposite party-2. 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.

It transpires from the record that an F.I.R. dated 24.02.2023 was lodged by first informant-Bigu Chauhan, father of the prosecutrix, which was registered as Case Crime No.0056 of 2023, under Section 363 and 366-A IPC, police station Nagra, district Ballia. In the aforesaid F.I.R.,

applicant Ajay Verma has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. dated 24.02.2023 is to the effect that named accused Ajay Verma is alleged to have enticed away the minor daughter of the first informant namely X aged about 14 years.

After aforementioned F.I.R. was lodged on 24.02.2023, the Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The prosecutrix was recovered on 27.02.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 CrPC, which is on record at page 21 of the paper book. However, she has not supported the F.I.R. To the contrary, she has stated that she herself called the applicant at Buxar railway station, she reached Buxar and met with applicant and thereafter they went to Varanasi where both lived together as husband and wife. However, the said statement also contains a recital that no deliberate act was performed by the applicant with the prosecutrix. Subsequent to above, the prosecutrix was requested for her medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, reiterated her earlier statement recorded under Section 161 CrPC but with the improvement that she was in deep love with the applicant and wants to marry her. The Doctor, who medically examined the prosecutrix, however did not find any injury on the body of the prosecutrix. Certain samples were taken from the body of prosecutrix for pathological examination. However, the result of the same is negative. Ultimately, the statement of prosecutrix was recorded under Section 164 CrPC, which is on record as page 23 of the paper book, wherein she has rejoined her earlier statement recorded under Section 161 CrPC. During the course of investigation, Investigating Officer recovered the High School Certificate of the prosecutrix wherein her date of birth is recorded as 01.01.2009. The occurrence in question occurred on 23.02.2023. As such the prosecutrix was aged about 14 years one month and twenty two days on the date of occurrence. Investigating Officer further examined first informant and other witnesses under Section 161 CrPC, who have also supported the F.I.R. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the conclusion that offence under Section 376(3) IPC and Section 3/4 Pocso Act is also made out against the applicant. Accordingly, he submitted the charge-sheet dated 13.04.2023 against the applicant.

Learned counsel for the applicant submits that though applicant is a named as well as charge-sheeted accused but he is innocent. Referring to the statements of the prosecutrix, referred to above, he submits that the prosecutrix is a willing and consenting party. She went to Varanasi along with the applicant out of her own free will and they lived together as husband and wife on account of the fact that she was in deep love with the applicant. As such no offence under Section 363/366-A IPC can be said to have been committed by the applicant. The medical evidence does not go to show that the modesty of the prosecutrix was dislodged by the applicant. As such no offence under Section 376(3) IPC or 3/4(2) Pocso Act is made out against the applicant. Even otherwise, the applicant is a man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. The police report under Section 173 (2) CrPC 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. He therefore contends that no good ground exists to prolong the custodial arrest of applicant. Applicant is in jail since 14.03.2023. As such he has undergone more than four months of incarceration. 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. has opposed the prayer for bail. He submits that since applicant is a named and charge-sheeted accused therefore he does not deserve any indulgence by this Court. According to the learned A.G.A. the applicant is a married man. Consequently, the crime alleged to have been committed by the applicant is not only illegal but also immoral. As per the date of birth of the prosecutrix recorded in her high school certificate, she was aged about 14 years one month and twenty two days on the date of occurrence i.e. below 16 years of age. In view of above, the consent, if any, of the prosecutrix is wholly immaterial. To buttress his submission, the learned A.G.A. has referred to the judgement of the Supreme Court in X (Minor) Vs. State of Jharkhand 2022 Livelaw (SC) 194 and on basis thereof he contends that 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 leaned 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 the present application for bail could not be dislodged by the learned counsel for applicant with reference to the record, this Court does not find any good ground to enlarge the applicant on bail.

The application for bail thus fails and is liable to be rejected.

It is accordingly rejected. "

Learned counsel for applicant contends that subsequent to the above order dated 25.07.2023, the prosecutrix has deposed before Court below as P.W. 1, whereas first informant has deposed before Court below as P.W. 2. Both the witnesses have not supported the F.I.R. On the above premise, the learned counsel for applicant contends that in view of above, no useful purpose shall be served in prolonging the custodial arrest of applicant during the pendency of trial.

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 14.03.2023. As such, he has undergone more than 7 and 1/2 months of incarceration. The police report under Section 173 (2) Cr. P. C. has already been submitted against applicant, therefore the entire evidence sought to be relied upon by the

prosecution against applicant stands crystallized. However, no such circumstance now exists 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, 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. has opposed the prayer for bail. However, the learned A.G.A. 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, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation made and coupled with the fact that since the prosecutrix and the first informant who have deposed before Court below as P.W. 1 and P.W. 2, who have not supported the F.I.R., inasmuch as there is no fear that applicant may terrorize the crucial witnesses or tamper the evidence, therefore, no useful purpose shall be served in prolonging the custodial arrest of applicant clean antecedents of applicant, the period of incarceration undergone, the police report under Section 173 (2) Cr. P. C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, yet 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, therefore, irrespective of the objections raised by the learned A.G.A. in opposition to present application for bail, but without making any comments on the merits of the case, the applicant has made out a case for bail.

Let the applicant Ajay Verma, be released on bail in the aforesaid case crime number 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) 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 :- 3.11.2023

HSM