

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41583 of 2023

Applicant :- Tasleem Shah

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

Counsel for Applicant :- Shashi Shankar Shukla

Counsel for Opposite Party :- G.A., Pramod Kumar Maurya

Hon'ble Rajeev Misra, J.

1. Heard Mr. Vishwjeet Pandey, Advocate holding brief of Mr. Shashi Shankar Shukla, the learned counsel for applicant, the learned A.G.A. for State and Mr. Pramod Kumar Maurya, the learned counsel representing first informant.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Tasleem Shah seeking his enlargement on bail in Case Crime No. 0289 of 2022 under Section 376 (2) (n) I.P.C. and Sections 5/6 POCSO Act, Police Station Pipraich, District Gorakhpur, during the pendency of trial.

4. First bail application of applicant was rejected by this Court by a detailed order dated 22.22.2022 passed in Criminal Misc. Bail Application No. 46917 of 2022 (Tasleem Shah Vs. State of U.P. and 3 others). For ready reference, the same is reproduced herein under:

" Heard Mr. Shashi Shekhar Maurya, the learned counsel for applicant, the learned A.G.A. for State and Mr. Sajjad Khan, Advocate, holding brief of Mr. Pramod Kumar Maurya, the learned counsel for first informant opposite party 2.

This application for bail has been filed by applicant Tasleem Shah seeking his enlargement on bail in Case Crime No. 289 of 2022, under Sections 376 (2) (n) IPC and Sections 5/6 POCSO Act, P.S. Pipraich, District Gorakhpur, during the pendency of trial.

Perused the record.

Record shows that in respect of incidents, which are alleged to have occurred for the last two years, first informant Ajay Kumar Gupta (father of the prosecutrix) lodged an F.I.R. dated 28.6.2022, which was registered as Case Crime No. 289 of 2022, under Sections 376 (2) (n) IPC and Sections 5/6 POCSO Act, P.S. Pipraich, District Gorakhpur. In the aforesaid F.I.R., applicant Tasleem 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 developed relations with minor daughter of first informant i.e. prosecutrix and thereafter, repeatedly dislodged her modesty by committing rape upon her.

After lodging of the aforementioned F.I.R. statutory investigation of the concerned crime number commenced. Investigating Officer examined first informant who has supported the F.I.R. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr. P. C., wherein the prosecutrix has not supported the F.I.R. To the contrary, she has stated that she was a willing and consenting party. The prosecutrix was requested for her medical examination. In her statement before the Doctor, the prosecutrix reiterated her earlier statement recorded under Section 161 Cr. P. C. The Doctor who medically examined the prosecutrix did not find any injury on her person or any such sign so as to denote commission of sexual violence. With regard to the private part of the prosecutrix, the Doctor opined as follows:-

Hymen Old torn and healed

Certain samples were collected from the body of the prosecutrix for pathological examination. However, the supplementary medical report of the prosecutrix has not been brought on record. As per the medical opinion, the prosecutrix was said to be aged about 18 years.

During the course of investigation, Investigating Officer examined the

Principal of the institution from where the prosecutrix passed her Class Xth examination. As per the statement of the Principal, the date of birth of the prosecutrix as recorded in the school record is 18.7.2006. As such on the date of lodging of the F.I.R., prosecutrix was aged about 15 years and 1 month. On the basis of above and other material collected by Investigating Officer during the 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 4.8.2022, whereby applicant has been charge sheeted under Section 376 (2) (n) IPC and Sections 5/6 POCSO Act,

Learned counsel for applicant submits that even though applicant is a named as well as charge sheeted accused, but he is innocent. Applicant has been falsely implicated in the crime in question. The medical evidence does not support the prosecution story as such offence alleged against applicant is not established.

He has then referred to the statement of the prosecutrix as recorded under Section 161 Cr. P. C., before the Doctor, and under Section 164 Cr. P. C. On the basis of above, he submits that prosecutrix is a willing and consenting party and therefore, no criminality as alleged can be said to have been committed by applicant. As per the medical opinion, the prosecutrix is major. No act of kidnapping the prosecutrix was committed by applicant. To the contrary, the prosecutrix herself came to applicant. 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 28.6.2022. As such, he has undergone more than 5 1/2 months of incarceration. 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. and the learned counsel for first informant have opposed the present application for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore, he does not deserve any indulgence by this Court. It is then contended that as per the educational record, the date of birth of the prosecutrix is 18.7.2006. As such, on the date of lodging of F.I.R., prosecutrix was aged about 15 years and 1 month. In view of above, the Consent and willingness of the

prosecutrix, if any, is wholly irrelevant. Attention of the Court is invited to the judgement of the Supreme Court in X (Minor) Vs. State of Jharkhand, MANU/SCOR/26579/2022, wherein in almost identical circumstances, the bail granted to the accused was set aside by the Apex Court. On the aforesaid premise, it is, therefore, contended that no sympathy be shown by this Court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for state, learned counsel for first informant, upon perusal of material brought on record, nature of offence, evidence, complicity of the accused, accusation made and coupled with the fact that since prosecutrix was below 16 years of age on the date of lodging of the F.I.R., her consent and willingness being irrelevant, the provisions contained in Section 6 POCSO Act and the judgement of Supreme Court in X (Minor) Vs. State of Jharkhand (supra), but without expressing any opinion on the merits of the case, no ground for bail is made out.

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

Accordingly, bail application is rejected.

Order Date :- 22.12.2022 "

5. Learned counsel for applicant submits that no charge-sheet has been submitted against applicant. Furthermore, applicant is in jail since 28.06.2022. As such, he has undergone more than one year and five months of incarceration. On the above premise, he submits that applicant is liable to be enlarged on bail.

6. Even otherwise, applicant is a man of clean antecedents inasmuch as he has no criminal history to his credit except the present one. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, the learned counsel for applicant 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..

7. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed this repeat application for bail. They submit that prosecutrix is a young girl of tender age, aged about 15 years and one month as such the rigours of law laid down by Apex Court in **X (Minor) Vs. The State of Jharkhand and Another, 2022 Live Law (SC) 194** are clearly attracted in the present case. According to the learned A.G.A. the charge-sheet has already submitted against applicant on 04.08.2022. The period of incarceration undergone by applicant is by itself not so sufficient so as to enlarge the applicant on bail. They therefore submit that considering the nature and gravity of offence, applicant is not liable to be enlarged on bail.

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

9. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel for first informant, upon consideration of material on record, evidence, nature and gravity of offence, accusations made as well as complicity of applicant coupled with the fact that prosecutrix is a young girl of tender age, she was aged about 15 years and one month on the date of occurrence, in view of above, the rigours of law laid down by Apex Court in **X (Minor) Vs. The State of Jharkhand and Another, 2022 Live Law (SC) 194** are clearly attracted in the present case, the charge-sheet has already submitted against applicant on 04.08.2022, considering the nature and gravity of offence, therefore irrespective of the varied submissions urged by

the learned counsel for applicant in support of present application for bail, the Court does not find any new or good ground to enlarge the applicant on bail.

10. As a result, the repeat application for bail fails and is liable to be **rejected**.

11. It is accordingly **rejected**.

Order Date :- 4.12.2023

YK