

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41312 of 2023

Applicant :- Ravindra Pratap Singh @ Sonu

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

Counsel for Applicant :- Shashi Dhar Goswami

Counsel for Opposite Party :- G.A.,Shri Prakash Dwivedi

Hon'ble Rajeev Misra,J.

1. Heard Mr. Shashi Dhar Goswami, the learned counsel for applicant, the learned A.G.A. for State and Mr. Shri Prakash Dwivedi, the learned counsel for first informant.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Ravindra Pratap Singh @ Sonu seeking his enlargement on bail in Case Crime No. 94 of 2023 under Sections 363, 366,376 (2n), 506 I.P.C. and Sections 5L/6 POCSO Act, Police Station-Padari, District-Mirzapur, during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon 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 the present application for bail.

5. Learned counsel for applicant contends that though the applicant is a named as well as charge-sheeted accused inasmuch as the charge sheet has been submitted against applicant on 20.06.2023 yet he is liable to be enlarged on bail. He submits that as per transfer certificate, the date of birth of the prosecutrix is

12.06.2002. As such, on the date of occurrence, the prosecutrix was aged about 17 years, 10 months and 11 days. Attention of the Court was then invited to the statement of the prosecutrix recorded under Section 161 Cr.P.C, copy of which is on record at page 28 of the paper book. On the basis of said statement, it is thus urged by the learned counsel for applicant that the prosecutrix is a willing and consenting party inasmuch as the prosecutrix herself joined the applicant on his motorcycle and stayed with applicant for 11 days. Though the prosecutrix in her statement under Section 164 Cr.P.C. has tried to improve upon her earlier statement under Section 161 Cr.P.C. but the basic tenor of the said statement is similar to the previous statement under Section 161 Cr.P.C. On the above premise, learned counsel for applicant 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. Applicant is in custody since 20.05.2023. As such he has undergone more than five and a half months of incarceration. 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 applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, the learned counsel for applicant 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 for first informant have vehemently opposed the prayer for bail. They submit that since the applicant is a named as well as charge-

sheet accused, therefore he does not deserve any indulgence by this Court. The applicant is guilty of dislodging the modesty of the prosecutrix who is below 18 years of age. As such, she is a child within the meaning of POCSO Act therefore her consent if any is immaterial. As such, no sympathy be shown by this court in favour of applicant. However they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

8. 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 as per transfer certificate, the prosecutrix was aged about 17 years 10 months and 11 days on the date of occurrence, as per the statement of the prosecutrix recorded under Sections 161 Cr.P.C., the prosecutrix is a willing and consenting party inasmuch as the prosecutrix has herself accompanied applicant on his motorcycle and remained with applicant for 11 days, though the prosecutrix in her statement under Section 164 Cr.P.C. has tried to improve upon her previous statement under Section 161 Cr.P.C. but the basic tenor of the said statement remains the same, the police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to relied upon by the prosecution against applicant 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, the judgement of apex Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5) the clean antecedents of applicant, the period of incarceration

undergone, therefore, irrespective of the objections raised by learned A.G.A. and the learned counsel for first informant in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

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

10. Let the applicant- **Ravindra Pratap Singh @ Sonu** 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.

11. 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 :- 7.11.2023

YK