

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 41533 of 2023

Applicant :- Aman

Opposite Party :- State of U.P.

Counsel for Applicant :- Sangam Singh, Mohan Kant Baghel

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr Abhay Pratap Singh, Advocate, holding brief of Mr. Mohan Kant Baghel, 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-**Aman** seeking his enlargement on bail in Case Crime No. 137 of 2023, under Sections 452, 376D, 506 I.P.C. and 67B I.T. Act, Police Station- Makhkhanpur, District- Firozabad during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 27.04.2023, a delayed F.I.R. dated 05.05.2023 was lodged by first informant Anjali (Prosecutrix) and was registered as Case Crime No. 137 of 2023, under Sections 452, 376D, 506 I.P.C. and 67B I.T. Act, Police Station- Makhkhanpur, District- Firozabad. In the aforesaid F.I.R. two persons namely Ashish Kumar and Aman i.e. the applicant herein have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that the named accused not only deliberately and forcibly dislodged the modesty of the prosecutrix but they also prepared an obscene video of the prosecutrix which was subsequently made viral.

6. After above-mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII of Cr.P.C. 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 fully supported the F.I.R. Thereafter, the prosecutrix was requested for her internal medical examination. However, the prosecutrix refused for her internal medical examination. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. which is on record at page 40 of the paper book. The prosecutrix in her said statement has reiterated her earlier statement under Section 161 Cr.P.C. Learned A.G.A. submits that during course of investigation, Investigating Officer recovered the obscene video of the prosecutrix prepared by accused and made viral. C.D Parcha No. 7 of the case diary clearly details the same. The obscene material was downloaded in a Pen Drive and given to the Investigating Officer. Subsequently, the requisite certificate in terms of Section 65-B of the Evidence Act was also given by Pradeep Kumar the husband of the prosecutrix to the Investigating Officer. Investigating Officer further examined other witnesses under Section 161 Cr.P.C. Witnesses so examined have 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 complicity of named accused including applicant is fully established in the crime in question. He accordingly submitted the charge sheet dated 23.07.2023, whereby, named accused have been charge sheeted under Sections 452, 376D, 506 I.P.C. and 67-B I.T. Act, Police Station- Makhkhanpur, District- Firozabad.

7. Learned counsel for applicant contends that though, applicant is a named and charge-sheeted accused, yet he is liable to be enlarged on bail. Referring to the provisions of I.T. Act, the learned counsel for applicant contends that under Section 67B of I.T. Act relates to a child and not an adult for the offence against women. Admittedly, the prosecutrix is an adult inasmuch as she is more than 18 years of age. As such, charge sheet submitted under Section 67B of I.T. Act against applicant is not only misconceived but also illegal. According to the learned counsel for applicant prosecutrix is major. She is a willing and consenting party. There is no medical evidence to support the ocular version of the occurrence inasmuch as the prosecutrix has herself refused for her internal medical examination. The statements of the prosecutrix under Sections 161/164 Cr.P.C. are not worthy of credence, therefore, the same are not liable to be accepted by this Court. As such, no prosecution of the applicant can be maintained.

8. 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 12.06.2023. As such he has

undergone more than four months of incarceration. The police report in terms of Section 173(2) Cr.P.C. has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, upto this stage, no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. He therefore, contends that applicant is liable to be enlarged on bail. In case, applicant is enlarged on bail he shall not misuse the liberty of bail and shall co-operate with the trial.

9. Per contra, the learned A.G.A has opposed the prayer for bail. He submits that since applicant is named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Learned A.G.A. contends that though there is no medical evidence to support the ocular version of the occurrence however, since prosecutrix in her statements under Sections 161 and 164 Cr.P.C. has clearly implicated the applicant and co-accused Ashish Kumar in the crime in question, therefore, no sympathy be shown by this Court in favour of applicant. Co-accused Ashish Kumar has been declared to be juvenile, therefore the trial aforementioned co-accused has been segregated. Referring to the judgment of the Supreme Court in **Phool Singh Vs. State of M.P. (2022) 2 SCC 74**, learned A.G.A. contends that it is by now well settled that the prosecution of an accused for an offence of rape or sexual assault can be maintained, even in the absence of medical evidence and on the solitary statement of the prosecutrix. However, in such a circumstance, the statement of the prosecutrix must be clear, categorical and consistent that is void of ambiguity. When, above-mentioned statements of the prosecutrix are taken as a whole and examined in the light of above, it cannot be said that they suffer from the voice of exaggeration or contradiction. As such the same fall in the category of impeccable evidence. According to the learned A.G.A. the C.D. Parch No.7 of the case diary clearly details the manner in which the assault was committed upon the deceased. It is after the obscene material was examined by the Investigating Officer that Section 376D I.P.C. was added though not mentioned in the charge sheet Since, the certificate under Section 65-B of the Evidence Act is already there on record in support of the electronic material recovered by the Investigating Officer regarding the manner of occurrence therefore, no sympathy be shown by this Court as the modesty of prosecutrix has been deliberately not only dislodge but has also be made viral.

10. When confronted with above, the learned counsel for applicant could not over come the same.

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, complicity of applicant, accusation made the nature and gravity of offence coupled with the fact that objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by the learned counsel for applicant, therefore, irrespective of the varied submissions urged by the learned counsel for applicant in support of the present application for bail, this Court does not find any good or sufficient good to enlarge the applicant on bail.

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

13. It is, accordingly **rejected**.

Order Date :- 28.11.2023

Imtiyaz