

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42348 of 2023

Applicant :- Akhilesh @ Golu

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

Counsel for Applicant :- Rashtrapati Khare, Gaurav Khare

Counsel for Opposite Party :- G.A., Dharendra Kumar Verma, Renu Swarnkar

Hon'ble Rajeev Misra, J.

1. Heard Mr. Gaurav Khare along with Mr. Rashtrapati Khare, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Present application for bail came up for orders on 17.11.2023 and this Court passed the following order:-

"Heard Mr. Rashtrapati Khare, 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 Akhilesh @ Golu seeking his enlargement on bail in Case Crime No. 44 of 2023, under Section 363, 376, 323, 506, 120B IPC, Sections 3/4 POCSO Act, 2012 and Sections 3 (2) 5 SC/ST (PA) Act, P.S. Raipura, District Chitrakoot 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 first informant opposite party 2 on 28.9.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant opposite party 2 to oppose this application for bail.

After some arguments, it transpires that the age of the prosecutrix has been determined with reference to her date of birth recorded in the School Leaving Certificate dated 8.5.2023, wherein the date of birth of the prosecutrix is mentioned as 17.6.2005. The Determination of age so made is prima facie legally unsustainable. The said document cannot be relied upon for determining the age of the prosecutrix, as per the date of birth mentioned therein. By virtue of the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the age of the prosecutrix can be determined only as per the date of birth recorded in the document recognized under Section 94 (2) (i) and 94 (2) (ii) of Section

Learned A.G.A. contends that charge sheet has already been submitted against applicant on 03.08.2023.

In view of above, Investigating Officer is directed to submit an application before the Court below in terms of Section 173 (8) Cr. P. C. seeking permission of the Court to conduct further investigation. After permission is granted by Court below, Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her. It shall be open to the Investigating Officer to discover any other document as per the provisions contained in Section 94 (2) (i) and 94 (2) (ii) of the aforementioned Act regarding the date of birth of the prosecutrix. The necessary exercise shall be completed within a period of three weeks from today. Copy of the supplementary case diary shall be transmitted by the Investigating Officer to this Court through the learned A.G.A. before the next date fixed.

Matter shall, accordingly, re-appear as fresh on 12.12.2023."

4. Pursuant to above order dated 17.11.2023, the Investigating Officer has collected the date of birth of prosecutrix recorded in the institution first attended by her. The same has been brought on record by means of an affidavit of the Investigating Officer filed by the learned A.G.A. in Court today, which is taken on record.

5. Record shows that in respect of an incident, which is alleged to have occurred on 14.04.2023, a delayed FIR dated 18.04.2023 was lodged by first informant-Matangjan (father of the prosecutrix) and was registered as Case Crime No. 0044 of 2023, under Section 363 IPC, Police Station-Raipura, District-Chitrakoot. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.

6. The gravamen of the allegations made in the FIR is to the effect that an unknown person enticed away the daughter of first informant i.e. the prosecutrix.

7. After above-mentioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. The prosecutrix was recovered on 10.05.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 25 of the paper book. The prosecutrix in her aforesaid statement has narrated the entire events that have occurred since the date of occurrence till date of return. The prosecutrix, however, in her aforesaid statement has stated that her modesty was dislodged deliberately and forcibly by applicant Akhilesh @ Golu. The prosecutrix was thereafter requested for her

internal medical examination. According to the learned A.G.A. the Medico Legal Examination Report of the prosecutrix is on record as C.D. Parcha No. 8 at page 41 of the case diary. The prosecutrix in her statement before the Doctor, who medically examined the prosecutrix, did not find any external or internal injury on her body so as to denote commission of deliberate or forceful sexual assault.. However, with regard to the private part of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Rupture."

8. Certain samples were taken from the body of prosecutrix for pathological examination. However, the results of the same are in negative. As per the USG report, the prosecutrix was not found to be in family way. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record as C.D. Parcha No. 8 at page 41 of the case diary. The prosecutrix in her aforesaid statement has reiterated her previous statement under Section 161 Cr.P.C. and has alleged that her modesty was deliberately dislodged by the applicant Akhilesh @ Golu.

9. During course of investigation, Investigating Officer recovered the School Leaving Certificate of the prosecutrix wherein her date of birth is recorded as 17.06.2005. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 14.04.2023. As such, the prosecutrix was aged about 17 years, 9 months and 29 days on the date of occurrence. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. 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 fully established in the crime in question. He, accordingly, submitted the charge sheet dated 03.08.2023 whereby applicant has been charge sheeted under Sections 363, 376, 323, 506, 120-B IPC, Sections 3/4 POCSO Act and Sections 3 (2) 5 SC/ST (PA) Act.

10. Learned counsel for applicant contends that though applicant is not named but charge sheeted accused yet he is liable to be enlarged on bail. Applicant is innocent. He has been falsely implicated in the aforementioned case crime number. Attention of the Court was invited to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. With reference to the statement of the prosecutrix under Section 161 Cr.P.C., he submits that the prosecutrix has joined the applicant and thereafter accompanied

him to various places by public mode of transport. As such, the prosecutrix is a willing and consenting party. No objection was raised by the prosecutrix even when she accompanied the applicant by a public mode of transport. The medical evidence does not show that any deliberate or forceful sexual assault was committed upon the prosecutrix. Moreover, the prosecutrix was aged about 17 years and almost 10 months on the date of occurrence. As such, applicant is liable to be enlarged on bail.

11. 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 20.06.2023. As such, he has undergone more than 5 and 1/2 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, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, he 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.

12. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that though applicant is not named but a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. However, the learned A.G.A. could not dislodge the factual and legal submissions urged by the learned counsel for applicant in support of the present application for bail with reference to the record at this stage.

13. Having heard, the learned counsel for applicant, the learned A.G.A. for State, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that prima-facie, the prosecutrix herself is a willing and consenting party as per her statement recorded under Sections 161 and 164 Cr.P.C. inasmuch as, the prosecutrix has herself accompanied the applicant willingly without raising any objection when she accompanied the applicant to various places by public mode of transport, the medical opinion does not fully support the ocular version of the occurrence, the clean antecedents of applicant, the period of incarceration undergone, the police report in terms of Section 173(2) Cr.P.C. has already been submitted, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized, 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 judgment of Supreme Court in **Sumit Subhashchandra Gangwal Vs. State of Maharashtra, 2023 LiveLaw (SC) 373** (Paragraph 5), therefore, irrespective of the objections raised by the learned A.G.A. in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

14. Accordingly, the bail application is **allowed**.

15. Let the **applicant-Akhilesh @ Golu**, 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/SHE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/HER 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.

16. 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 :- 12.12.2023

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