

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42125 of 2023

Applicant :- Uzaif Waris Khan

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

Counsel for Applicant :- Sharique Ahmed

Counsel for Opposite Party :- G.A.,Aarushi Khare

Hon'ble Rajeev Misra,J.

Heard Mr. Sharique Ahmed, the learned counsel for applicant, the learned A.G.A. for State and Ms. Aarushi Khare, the learned counsel for opposite party-3 (High Court Legal Service Committee, High Court, Allahabad).

This application for bail has been filed by applicant Uzaif Waris Khan seeking his enlargement on bail in Case Crime No.381 of 2023, under Sections 363, 366, 376 IPC and Section 3/4 Pocso Act, police station Naubasta, district Kanpur Nagr, during the pendency of trial.

Perused the record.

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 03.10.2023. 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.

Record shows that in respect of an incident which is alleged to have occurred on 15.07.2023 a delayed first information report dated 16.07.2023 was lodged by first informant, namely, Ajay Rajpoot (father of the prosecutrix) and was registered as Case Crime No.0381 of 2023, under Sections 363, 366 IPC, police station Naubasta, district South (Commissionerate Kanpur Nagar). In the aforesaid F.I.R., applicant Uzaif Waris Khan has been nominated as solitary named accused.

The gravamen of the allegations made in the first information report is to the effect that named accused Uzaif Waris Khan enticed away the daughter of the first informant i.e. prosecutrix aged about 17 years.

After aforementioned first information report was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII CrPC. The prosecutrix was recovered on 16.07.2023. The statement

of the prosecutrix was recorded under Section 161 CrPC, which is on record at page 34 of the paper book. The prosecutrix in her aforesaid statement has not supported the FIR. To the contrary, the prosecutrix has stated that she herself went to the applicant on the message sent by the applicant. Thereafter, the prosecutrix was requested for her internal medical examination but the same was refused by her. Ultimately, the statement of the prosecutrix was recorded under Section 164 CrPC, which is on record at page 42 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 CrPC. Investigating Officer on the basis of above and other material collected by him during the course of investigation came to the conclusion that complicity of applicant is fully established in the crime in question. He, accordingly, submitted the charge-sheet dated 28.08.2023, whereby applicant has been charge-sheeted under Sections 363, 366, 376 IPC and Section 3/4 Pocso Act.

Learned counsel for the applicant contends that though the applicant is a named as well as charge-sheeted accused yet he is liable to be enlarged on bail. The prosecutrix in her statements recorded under Section 161/164 CrPC has not supported the FIR. The prosecutrix and the applicant were in love with each other for the last one year as is clearly explicit from her statement under Section 161 CrPC. Therefore, she is a willing and consenting party. As such, no offence as complained of can be said to have been committed by the applicant. On the above premise, the learned counsel for applicant submits that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in jail since 17.07.2023. As such, he has undergone more than three months of incarceration. The police report in terms of Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. It is thus urged by the learned counsel for applicant 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 investigation/trial.

Per contra, the learned A.G.A. has vehemently opposed the prayer for bail. He submits that since the applicant is a named as well as charge-sheeted accused therefore, he does not deserve any indulgence by this court. He submits that as per the High School Certificate, the date of birth of the prosecutrix

is 16.10.2005. The occurrence giving rise to present criminal proceeding is alleged to have occurred on 15.07.2023. As such, the prosecutrix is aged about 17 years 08 months and 13 days on the date of occurrence therefore, she is covered within the definition of '*child*' under the Pocso Act. Since the prosecutrix is minor and below 18 years of age therefore her consent, if any, is wholly immaterial. On the above premise, 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 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, coupled with the fact that the prosecutrix is a small girl aged below 18 years of age therefore her consent, if any, is wholly immaterial 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 ground to enlarge the applicant on bail.

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

It is accordingly **rejected**.

Order Date :- 30.10.2023.

Rks.