

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42329 of 2023

Applicant :- Sanju Maurya

Opposite Party :- State of U.P.

Counsel for Applicant :- Ravindra Kumar Mishra,Radhey Shyam Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Ravindra Kumar Mishra, 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 Sanju Maurya seeking his enlargement on bail in Case Crime No. 121 of 2023, under Sections 366, 376D IPC, P.S. Milak, District Rampur, during the pendency of trial.

Record shows that in respect of an incident, which is alleged to have occurred on 6.6.2023, a delayed F.I.R. dated 7.6.2023 was lodged by Amt Kumar (father of the prosecutrix) and was registered as Case Crime No. 121 of 2023, under Sections 366, 376D IPC, P.S. Milak, District Rampur. In the aforesaid F.I.R., applicant Sanju Maurya 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 deliberately and forcibly enticed away the minor daughter of the first informant i.e. the prosecutrix namely X aged about 16 years.

After above mentioned F.I.R. 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 7.6.2023. The statement of the prosecutrix was thereafter recorded under Section 161 Cr. P. C. which is on record at page 24 of the paper book. The prosecutrix in her aforesaid statement has not supported the F.I.R. To the contrary, it appears that the prosecutrix herself joined the named accused. However,

the prosecutrix in her aforesaid statement has not alleged that her modesty was dislodged by the named accused deliberately or forcibly. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has departed from her previous statement under Section 161 Cr. P. C. The Doctor, who medically examined the prosecutrix, however, did not find any injury on her body so as to denote commission of deliberate sexual assault. Certain samples were taken from the body of the prosecutrix for pathological examination. However, as per the supplementary medico legal report, the results of the same are in negative. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr. P. C., wherein the prosecutrix has departed from her previous statement under Section 161 Cr. P. C. and has now alleged that her modesty was dislodged deliberately by named accused Vijay. She has further detailed the manner of occurrence. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr. P. C. Witnesses so examined have attempted to support the F.I.R. On the basis of above and other material collected by the Investigating Officer, he came to the conclusion that complicity of named accused is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet dated 21.7.2023, whereby both the named accused (including applicant) were charge sheeted under Sections 366, 376 D IPC.

Learned counsel for applicant submits that though applicant is a named and charge sheeted accused, yet he is liable to be enlarged on bail. The medical evidence does not support the ocular version of the occurrence as disclosed in the subsequent statement of prosecutrix recorded under Section 164 Cr. P. C. Furthermore, the prosecutrix in her statement under Section 161 Cr. P. C. has not stated that her modesty was dislodged by applicant Sonu Maurya nor she has even whispered about the manner of occurrence regarding dislodging her modesty. Subsequently, the prosecutrix in her statement under Section 164 Cr. P. C. has departed from her previous statement under Section 161 Cr. P. C. However, the departure so made remains unexplained upto this stage. Attention of the Court was then invited to the judgement of the Supreme Court in **Phool Singh Vs. State of M.P., (2022) 2 SCC 74**. With reference to above, the learned counsel for applicant contends 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

consistent, clear and categorical. When the above mentioned statements of the prosecutrix are taken as a whole and examined in the light of above, it cannot be said that the same are of impeccable character. The contradiction, exaggeration and embellishment that has emerged in the subsequent statement of the prosecutrix as noted above remain unexplained upto this stage.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in jail since 10.06.2023. As such, he has undergone more than 5 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 circumstance has emerged necessitating the custodial arrest of the applicant during the pendency of trial. He, therefore, 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.

Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused, therefore, no indulgence be shown by this Court in favour of applicant. The prosecutrix in her statement under Section 164 Cr. P. C. has not only supported the F.I.R. but has also detailed the manner of occurrence. Under the scheme of the Code i.e. Cr. P. C., the statement under Section 164 Cr. P. C. has to be given credence over the statement under Section 161 Cr. P. C. Since the prosecutrix is a young girl, whose modesty has been dislodged, therefore, no sympathy be shown by this Court in favour of applicant. However, he. could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

Having heard the learned counsel for applicant, the learned A.G.A. for state, upon perusal of record, evidence, complicity of the accused, accusation made, the nature and gravity of offence, coupled with the fact that the prosecutrix in her statement under Section 161 Cr. P. C. has not supported the F.I.R. , to the contrary, it appears that the prosecutrix herself joined the named accused, however, the prosecutrix in her aforesaid statement has not alleged that her modesty was dislodged by the named accused deliberately or forcibly, the prosecutrix in her statement before the Doctor, who medically examined her, has departed from her previous statement under Section 161 Cr. P. C., the Doctor, who medically examined the prosecutrix did not find any injury on her body so as to denote

commission of deliberate sexual assault, as per the supplementary medico legal report, the results of the same are in negative, applicant is a named and charge sheeted accused yet the Court finds that the prosecutrix in her subsequent statement under Section 164 Cr. P. C. has supported the F.I.R., but she has departed from her previous statement under Section 161 Cr. P. C., the departure so made remain unexplained, when the statement of the prosecutrix referred to above, are taken as a whole, they do not fall in the category of impeccable evidence, the prosecutrix is herself not clear about the story which she set out to prov, the clean antecedents of the applicant, the period of incarceration undergone, the police report in terms of Section 173 (2) Cr. P. C. i.e. charge sheet 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 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, the applicant has made out a case for bail.

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

Let the applicant **Sanju Maurya** involved in aforesaid case crime number, be released on bail on his furnishing a personal bond with 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 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 counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under section 229-A I.P.C..

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law,

under section 174-A I.P.C.

(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 him 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.

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 :- 17.11.2023

HSM