

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42269 of 2023

Applicant :- Jagdish Sonkar

Opposite Party :- State of U.P.

Counsel for Applicant :- Muktesh Kumar Singh

Counsel for Opposite Party :- G.A.,Ashish Bajpayee

Hon'ble Rajeev Misra,J.

1. Heard Mr. Muktesh Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ashish Bajpayee, the learned counsel representing first informant.

2. Perused the record.

3. This application for bail has been filed by applicant-Jagdish Sonkar seeking his enlargement on bail in Case Crime No. 60 of 2023, under Sections 376, 506, 120-B IPC, Police Station-Kotwali City, District-Mirzapur during the pendency of trial.

4. Record shows that an FIR dated 02.06.2023 was lodged by first informant i.e. the prosecutrix Moni Sonkar and was registered as Case Crime No. 60 of 2023, under Sections 376, 506, 120-B IPC, Police Station-Kotwali City, District-Mirzapur. In the aforesaid FIR, 6 persons namely - (1) Jagdish Sonkar (applicant herein), (2) Gutaru @ Nanak, (3) Dharmendra @ OP, (4) Munni, (5) Sanjana and (6) Sandhya have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused Jagdish Sonkar developed affinity with the prosecutrix when she was minor. Subsequently, he extended promise of marriage to the prosecutrix and on basis thereof, repeatedly and continuously dislodged the modesty of the prosecutrix. The FIR further records that named accused ultimately, declined to marry to the prosecutrix, even when, the prosecutrix is ready to marry the applicant/named accused-Jagdish Sonkar. The FIR also records that when the marriage of the prosecutrix was settled with another person, named accused Jagdish Sonkar intervened and got the same broken by transmitting obscene material.

6. 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 statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 33 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR. She has further stated that even when the marriage of the prosecutrix was solemnized with another person, named accused Jagdish Sonkar i.e. applicant herein intervened and got settlement of the marriage of the prosecutrix with another person broken. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has reiterated her previous statement under Section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate sexual assault. However, with regard to the private parts of the prosecutrix, the Doctor has opined as under:-

"Hymen - Ruptured Old healed torn"

7. Certain samples were collected from the body of prosecutrix. However, the Supplementary Medico Legal Report of the prosecutrix has not been brought on record. As per the medical opinion, the prosecutrix is said to be aged about 18 to 19 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein the prosecutrix has rejoined her previous statement under Section 161 Cr.P.C. The prosecutrix has passed her High School examination. The date of birth of the prosecutrix recorded in the said certificate is 01.07.2000. The FIR giving rise to present criminal proceedings was lodged on 02.06.2023. As such, the prosecutrix was aged about 23 years on the date of lodging of the FIR.

8. During course of investigation, Investigating Officer examined other witnesses under Section 161 Cr.P.C. Witnesses so examined have also 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 28.07.2023 whereby applicant-Jagdish Sonkar has been charge sheeted under Sections 376, 504, 506 IPC.

9. Learned counsel for applicant contend that though applicant is a named as well as charge sheeted accused yet he is liable to be

enlarged on bail. As per the material on record, the prosecutrix is major. She is a willing and consenting party. As such, no deliberate act of sexual assault was committed by the applicant upon the prosecutrix. He, therefore, contends that applicant is liable to be enlarged on bail.

10. Even otherwise, applicant is man of clean antecedents inasmuch as, he has no criminal history to his credit except the present one. Applicant is in jail since 06.06.2023. As such, he has undergone 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, up to this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, it is urged 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.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that it is true that the prosecutrix is major and prima-facie she is a willing and consenting party yet the applicant is not liable to be enlarged on bail. The prosecutrix has been clear and categorical with regard to the fact that the physical relations were developed between the parties on the promise extended by the applicant that he shall marry the prosecutrix. The applicant has subsequently resiled from the promise so made whereas, the prosecutrix is still ready and willing to marry the applicant. He, therefore, contends that deceit has been played by the applicant with the prosecutrix, therefore, he does not deserve any indulgence by this Court. Learned A.G.A. then submits that the issue as to whether any promise of marriage was made or not is a question of fact which can be considered only during the course of trial. To buttress his submission, he has referred to the following judgments of the Supreme Court in **(i). Sonu alias Subhash Kumar Vs. State of U.P., 2021 SCC OnLine SC 181, (ii). Pramod Suryabhan Pawar Vs. State of Maharashtra, 2019 SCC OnLine SC 1073, (iii). Maheshwar Tigga Vs. State of Jharkhand (2020) 10 SCC 108, (iv). Mandar Deepak Pawar Vs. State of Maharashtra and Another, 2022 Live Law (SC) 649 & (v). Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC OnLine SC 89.** On the above premise, the learned A.G.A. submits that since the applicant has repeatedly and continuously dislodged the modesty of the prosecutrix on the false promise of marriage and has subsequently, resiled from the promise so made to the

prosecutrix, as such, he does not deserve any sympathy of this Court.

12. When confronted with above, the learned counsel for applicant could not overcome the same.

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, complicity of accused, accusations made coupled with the fact that the 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, but without making any comments on the merits of the case, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

14. As a result, present application for bail fails and is liable to be rejected.

15. It, accordingly, **rejected**.

Order Date :- 17.11.2023

Vinay