

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45708 of 2023

Applicant :- Deepu Vishwakarma

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

Counsel for Applicant :- Satyendra Kumar Tripathi, Bhupendra Pal

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. S.K. Tripathi, 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-Deepu Vishwakarma seeking his enlargement on bail in Case Crime No. 129 of 2023, under Sections 363, 376, 506 IPC and Sections 3/4 POCSO Act, Police Station-Ram Nagar, District-Varanasi during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present application for bail has already been served upon first informant-opposite party 2 on 05.10.2023. 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.

5. Record shows that in respect of an incident, which is alleged to have occurred on 14.06.2023, a delayed FIR dated 24.06.2023 was lodged by first informant-Ghoore Keshari (father of the prosecutrix) and was registered as Case Crime No. 129 of 2023, under Sections 376, 506 IPC and Sections 3/4 POCSO Act, Police Station-Ram Nagar, District-Varanasi. In the aforesaid FIR, applicant-Deepu Vishwakarma has been nominated as solitary named accused.

6. The gravamen of the allegations made in the FIR is to the effect that named accused i.e. applicant herein is alleged to have enticed away the minor daughter of the first informant i.e. the prosecutrix namely - X aged about 16 years and thereafter, deliberately and forcibly dislodged her modesty.

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 statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 31 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR. The prosecutrix has stated in unequivocal terms that she was kidnapped by the applicant for dislodging her modesty and has thereafter, detailed the manner of occurrence in which, her modesty was dislodged. Subsequent to above, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has again supported the FIR by rejoining her previous statement under Section 161 Cr.P.C. The Doctor, who medically examined the prosecutrix, did not find any signs on her person 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 - Old Torn"

8. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at pages 51 onwards. The prosecutrix in her aforesaid statement has reiterated her previous statement under Section 161 Cr.P.C. but with better particulars and details.

9. During course of investigation, Investigating Officer recovered the Birth Certificate of the prosecutrix wherein her date of birth is recorded as 02.04.2007. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 14.06.2023. As such, the prosecutrix was aged about 16 years, 2 months and 12 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 the 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 11.07.2023 whereby applicant has been charge sheeted under Sections 363, 376, 506 IPC and Sections 3/4 POCSO Act.

10. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Referring to the FIR giving rise to present criminal proceedings, he submits that the occurrence giving rise to present criminal proceedings is alleged to have

occurred on 14.06.2023 whereas the FIR was lodged on 24.06.2023. As such, there is a delay in lodging the FIR. However, neither in the FIR nor in the statement of the prosecutrix, the delay in lodging the FIR has not been explained. Referring to the judgment of the Supreme Court in **Rajagopal And Ors. Vs. The State of Tamil Nadu, AIR 2019 SC 2866/2019(5) SCC 403** (paragraph 8), the learned counsel for applicant contends that since the delay in lodging the FIR has not been sufficiently explained, therefore, the criminal prosecution of applicant itself cannot be maintained. It is then contended that medical evidence does not support the ocular version of the occurrence. Referring to the Medico Legal Examination Report of the prosecutrix, it is urged by the learned counsel for applicant that the Doctor, who medically examined the prosecutrix, did not find any signs on her body so as to denote commission of deliberate or forceful sexual assault.

11. Attention of the Court was then invited to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. With reference to above, it is urged by the learned counsel for applicant that there are various contractions in the aforesaid statements. As such, the same are not worthy of credit and therefore, no reliance can be placed upon them to infer the guilt of applicant in the crime in question.

12. According to the learned counsel for applicant, the applicant has been falsely implicated in the crime in question. As such, the prosecution of the applicant is false and malicious. Reference in this regard is made to paragraphs 19 and 20 of the affidavit filed in support of the present application for bail.

13. 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 24.06.2023. 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, up to this stage, no such circumstance has emerged on record 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.

14. Per contra, the learned A.G.A. has opposed the prayer for bail.

He contends that since the applicant is a named and charge sheeted accused, therefore, no indulgence be granted by this Court in favour of applicant. The prosecutrix is a young girl aged about 16 years, 2 months and 12 days and her modesty has been deliberately and forcefully dislodged by the applicant. Considering the above, he submits that no sympathy be shown by this Court in favour of applicant.

15. Learned A.G.A. has then referred to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. and on basis thereof, he submits that the prosecutrix in her aforesaid statements has remained clear, categorical and consistent qua the implication of the applicant in the crime in question and the manner of occurrence. He, therefore, contends that the minor discrepancies occurring in the statements of the prosecutrix are by itself insufficient and thereafter they are liable to be discarded. Referring to the Medico Legal Examination Report of the prosecutrix, the learned A.G.A. contends that medical opinion thus support the prosecution story inasmuch as, the medical opinion qua the private part of the prosecutrix is clearly against the applicant.

16. It is then contended by the learned A.G.A. that the false/malicious prosecution of the applicant sought to be alleged in the crime in question on the basis of averments made in paragraphs 19 and 20 of the affidavit filed in support of the present application for bail are unworthy of credit inasmuch as, the averments made in the aforesaid paragraphs are devoid of material particulars. According to the learned A.G.A., up to this stage, no such material has emerged on record on the basis of which false and malicious prosecution of the applicant in the crime in question could be inferred nor can it be said that the applicant is innocent. He, therefore, contends that in view of above conspectus, applicant is not entitled to be enlarged on bail.

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

18. 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 with reference to the record, 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.

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

20. It is accordingly **rejected**.

Order Date :- 1.12.2023

Vinay