

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43328 of 2023

Applicant :- Ram Raj Maurya

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

Counsel for Applicant :- Ajay Kumar Yadav

Counsel for Opposite Party :- G.A.,Abhilasha Singh

Hon'ble Rajeev Misra,J.

1. Heard Mr. Ajay Kumar Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mrs. Abhilasha Singh, the learned counsel representing opposite party-2, High Court Legal Committee, Allahabad.

2. Perused the record.

3. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon first informant/opposite party-4 on 29.09.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant/opposite party-4 to oppose this application for bail.

4. This is a repeat application for bail filed by applicant-Ram Raj Maurya seeking his enlargement on bail in Case Crime No. 86 of 2021 under Section 376C, 506 I.P.C. Sections 3 (2) (v) of SC/ST Act and Sections 5/6 POCSO Act, Police Station Hathgaon, District Fatehpur, during the pendency of trial i.e. Special Trial No. 503 of 2021 (State Vs. Ram Raj Maurya) now pending in the court of Additional Sessions Judge/Exclusive Special Judge (POCSO Act), Fatehpur.

5. First bail application of applicant was rejected by this Court by a

detailed order dated 09.05.2022 passed in Criminal Misc. Bail Application No. 5595 of 2022 (Ramraj Maurya Vs. State of U.P.) For ready reference, the same is reproduced herein under:

" Heard learned counsel for the applicant; learned A.G.A. for the State; and perused the record.

By this application, the applicant has prayed for being released on bail in Case Crime No.86 of 2021, under Section 376(3), 506 IPC, Section 5/6 of Pocso Act and Section 3(2)v and 3(2)va of SC/ST Act, P.S. Hathgaon, District Fatehpur.

The allegation against the applicant is with regard to sexually assaulting the victim, who is aged 14 years. The medical examination of the victim was inconclusive with regard to sexual assault on her but the hymen was found old torn and healed. The statement of the victim was also recorded under Section 164 CrPC which finds place on record as Annexure No.6 to the affidavit. The victim alleges that she was sexually assaulted by the applicant and also states her age as 14 years and that she is a student of Class-VII.

It appears that the report was lodged by victim's father after three months of her impregnation, when she was discovered pregnant.

According to the learned counsel for the applicant, the FIR is highly belated. It appears, the victim delivered a girl child who died three days later. An application was given by the investigating officer to connect the DNA of the applicant with the DNA of the child. In that regard, an FSL report is awaited.

The learned counsel for the applicant submits that, till date, the FSL report has not been obtained and the applicant is aged about 60 years and he has been falsely implicated, therefore, he is entitled to be released on bail, particularly, when he has no previous criminal history.

The learned AGA vehemently opposed the prayer.

Having considered the submissions, this Court is of the view as to what would be the consequence of the FSL report would be assessed during the course of trial. Here, the victim, who is a minor, has levelled specific

allegations against the applicant in her statement recorded under Section 164 CrPC and, according to her claim, she is aged 14 years. Even the report of the Chief Medical Officer, Fatehpur, which is there at page 30 of the paper book, reflects her age to be about 15 years. The medical report suggests that she was subjected to sexual intercourse some time earlier.

In view of the above, without expressing any opinion on the merits of the case, I am of the opinion that it is not a fit case for grant of bail to the applicant. The bail application is rejected.

Order Date :- 9.5.2022 "

6. Learned counsel for applicant submits that subsequent to order dated 09.05.2022, the YSR, DNA profile of new born child was conducted with the samples of applicant and mother of new born child. However, the D.N.A. profile of new born child did not tally with the DNA profile of applicant. Same is explicit from the F.S.L. report dated 28.03.2022, copy of which is on record at page 34 of the paper book. He therefore contends that applicant is not the biological father of new born child. Consequently, the allegations made in the F.I.R. and the statements of the prosecutrix that the prosecutrix was impregnated on account of the conduct of applicant is palpably false.

7. It is next contended by the learned counsel for applicant that the prosecutrix has deposed before court below as P.W.-1 but she has not supported the F.I.R. As a consequence of above, she has been declared hostile. On the above premise, he therefore contends that since the statement of the prosecutrix has been recorded as P.W.-1, therefore, now it cannot be said that if the applicant is enlarged on bail, she shall not terrorize the witnesses from deposing them before court below or hamper the course of trial.

8. 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 custody since 29.07.2021. As such, he has undergone more than two years and four months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the above premise, the learned counsel for applicant thus 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..

9. Per contra, the learned A.G.A. for State and the learned counsel representing opposite party-2 have vehemently opposed this repeat application for bail. However, they could not dislodge the legal and factual submissions urged by the learned counsel for applicant with reference to the record at this stage.

10. Having heard the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing opposite party-2, upon consideration of material on record, evidence, accusations made as well as complicity of applicant coupled with the fact that as per FSL report dated 28.03.2022 applicant is not the biological father of the new born child, in view of above the allegations made in the F.I.R. and the statement of the prosecutrix that the prosecutrix was impregnated on account of the conduct of applicant is palpably false, the prosecutrix has however deposed before court below as P.W.-1 who has not supported the F.I.R. and subsequently declared hostile, in view of above, in case the applicant is enlarged on bail, he shall not terrorize the witnesses and hamper the course of trial, the period of incarceration

undergone, the clean antecedents of applicant, police report (charge-sheet) 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 crystallised, yet in spite of above the learned A.G.A. and the learned counsel for opposite party-2 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 expressing any opinion on the merits of the case, applicant has made out a case for bail.

11. Accordingly, present application for bail is **allowed**.

12. Let the applicant-**Ram Raj Maurya** involved in aforesaid case crime number be released on bail on 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) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

13. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the

conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 2.12.2023

YK