

Reserved on:- 03.11.2023

Delivered on:- 17.11.2023

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. -
42945 of 2023

Applicant :- Fajar Urf Sonu

Opposite Party :- State of U.P.

Counsel for Applicant :- Rohit Nandan Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rohit Nandan Pandey, 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- Fajar Urf Sonu seeking his enlargement on bail in Case Crime No. 412 of 2023 under Section 376 I.P.C., Police Station-Phase-2 NOIDA, District-Gautam Buddh Nagar, during the pendency of trial.
4. Record shows that in respect of an incident, which is alleged to have occurred on 15.09.2023, a prompt F.I.R. dated 15.09.2023 was lodged by first informant Khushbu (the prosecutrix) and was registered as Case Crime No. 412 of 2023 under Section 376 I.P.C., Police Station-Phase-2 NOIDA, District-Gautam Buddh Nagar. In the aforesaid F.I.R. applicant- Fajar Urf Sonu has been nominated as solitary named accused..
5. The gravamen of the allegations made in the F.I.R is to the

effect that the named accused dislodged the modesty of the prosecutrix on 15.09.2023 by playing deceit with the prosecutrix.

6. After registration of aforesaid F.I.R., the 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 by the Investigating Officer under Section 161 Cr.P.C, which is on record at page 20 of the paper book. The prosecutrix in her aforesaid statement has fully supported the F.I.R.. 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 signs on the body of the prosecutrix so as to denote commission of deliberate sexual assault. However with regard to private part of the prosecutrix, the Doctor has opined as follows:

“Veginal Hymen-Torn”

7. Certain samples were taken from the body of prosecutrix, for pathological examination. However, the supplementary medico legal report of the prosecutrix has not been brought on record. Ultimately, the statement of prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 22 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under section 161 CrP.C.

8. The learned A.G.A. submits that investigation is still pending.

9. Learned counsel for applicant contends that though the applicant is a named yet he is liable to be enlarged on bail. The prosecutrix is major. She is a willing and consenting party. As such no offence as complained of can be said to have been committed by the applicant. As such applicant is liable to be enlarged on bail.

10. 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 16.09.2023. As such he has undergone more than one and a half months of incarceration. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of 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.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since the applicant is a named accused, therefore he does not deserve any indulgence by this Court. According to the learned A.G.A, the F.I.R. was promptly lodged by the prosecutrix on the date of occurrence itself I.e 15.09.2023. The prosecutrix in her statements under Sections 161/164 Cr.P.C. has fully supported the F.I.R. According to the learned A.G.A., the statement of the prosecutrix recorded under Section 164 Cr.P.C. has to be given credence over the statement under Section 161 Cr.P.C. as per scheme of the Code itself. The prosecutrix in her aforesaid statement has remained clear, categorical and consistent. Upto this stage, there is no such material on record on the basis of which the innocence of the applicant could be inferred or prosecution of applicant can be said to be false or malicious. It is thus urged that no sympathy be shown by this Court in favour of applicant.

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 consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicant 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 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, the present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 17.11.2023

YK