

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44148 of 2023

Applicant :- Dhanu Kumar

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

Counsel for Applicant :- Raghawendra Singh, Dinesh Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr Veer Pratap Singh, Advocate, holding brief of Mr. Raghawendra Singh, 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- **Dhanu Kumar** seeking his enlargement on bail in Case Crime No. 202 of 2023, under Sections 363, 366, 376 I.P.C. and 5j(ii)/6 POCSO Act, Police Station- Gadwar, District- Ballia during the pendency of trial.

4. Record shows that in respect of an incident which is alleged to have occurred on 12.07.2023, a delayed F.I.R. dated 13.07.2023 was lodged by first informant Indrajeet Bari (father of the prosecutrix) and was registered as Crime No. 202 of 2023, under Sections 363, 366, 376 I.P.C. and 5j(ii)/6 POCSO Act, Police Station- Gadwar, District- Ballia. In the aforesaid F.I.R. four persons namely Dhanu, Sudhir, Tangad Bharti and Tajeet have been nominated as named accused.

5. The gravamen of the allegations made in the F.I.R. is to the effect that named accused Dhanu Kumar (applicant herein) enticed away the minor daughter of the first informant i.e. prosecutrix namely - X aged about 16 years.

6. After aforementioned F.I.R. was lodged, the Investigating Officer proceed with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was recovered. Thereafter, Investigating Officer recorded the statement of the prosecutrix under Section 161 Cr.P.C., wherein the

prosecutrix has not supported the F.I.R. The prosecutrix was thereafter requested for her internal examination. In her statement before the doctor who medically examined the prosecutrix she has rejoined her previous statement under Section 161 Cr.P.C. She has further stated that on account of cohabitation with the applicant and upon consent of the prosecutrix she has come in family way. 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. However, with regard to private part of the prosecutrix, the doctor has opined as follows:

"Hymen- Ruptured (old healed)"

7. As per the USG report the prosecutrix was found to be family way and the age of the fetus was reported to be 28 weeks. Subsequently, 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. During course of investigation, Investigating Officer recovered the High School Certificate of the prosecutrix, wherein her date of birth is recorded as 14.05.2006. The occurrence giving rise to the present criminal proceedings is alleged to have occurred on 13.07.2023. As such, on the date of occurrence the prosecutrix was aged about 17 years, 1 month and 29 days. Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C., witnesses so examined have supported the F.I.R. 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. Accordingly, Investigating Officer submitted the charge sheet dated 11.08.2023 whereby, applicant has been charge sheeted under Sections 363, 366, 376 I.P.C. and 5j(ii)/6 POCSO Act

8. Learned counsel for applicant submits that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. The prosecutrix has ultimately solemnized marriage with the applicant as is evident from the marriage certificate which has been on record at page 61 of the paper book. Though, as per the date of the birth of the prosecutrix recorded in the High School certificate, the prosecutrix was minor as she was below 18 years of age on the date of her marriage yet irrespective of above, the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11(2) of the Hindu Marriage Act. Up to this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the

applicant as void. Furthermore, the marriage of the prosecutrix with the applicant stands registered on date under the provisions of U.P. Registration of Marriage Rules, 2017. On the above premise, it is thus urged that criminality, if any, committed by the applicant stands washed out.

9. 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 28.07.2023. As such, he has undergone more than 3 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 incriminating circumstance has emerged 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.

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

11. Having heard, the learned counsel for applicant, the learned A.G.A. for State upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the prosecutrix has ultimately solemnized marriage with the applicant as is evident from the marriage certificate, copy of which is on record at page 61 of the paper book, though, as per the date of the birth of the prosecutrix recorded in the High School certificate, the prosecutrix was minor as she was below 18 years of age on the date of her marriage with the applicant yet irrespective of above, the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11(2) of the Hindu Marriage Act, up to this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void, furthermore, the marriage of the prosecutrix with the applicant now stands registered on date under the provisions of U.P. Registration of Marriage Rules, 2017, the clean antecedents of the applicant, the period of incarceration undergone, the police report under Section 173 (2) CrPC 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.

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

13. Let the applicant-**Dhanu Kumar**, be released on bail in the aforesaid case crime number on his 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) THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE 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/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER 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/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(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 THE HIM/HER 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.

14. 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 :- 23.11.2023

Imtiyaz