

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43703 of 2023

Applicant :- Danish

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

Counsel for Applicant :- Ajay Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Ajay Kumar Srivastava, the learned counsel for applicant and the learned A.G.A. for State.

Perused the record.

This application for bail has been filed by applicant Ajay Kumar Srivastava, seeking his enlargement on bail in Case Crime No. 1314 of 2022, under Section 376AB IPC and Section 5M/6 POCSO Act, Police Station- Sahibabad, District Ghaziabad, during the pendency of trial.

At the very outset, the learned A.G.A. submits that notice of present application for bail has been served upon first informant/opposite party-2 on 30.9.2023. However, inspite of service of notice, no one has put in appearance on behalf of first informant-opposite party-2 to oppose this application for bail.

Record shows that in respect of an incident which is alleged to have occurred on 20.8.2022, a belated F.I.R. dated 21.8.2022 was lodged by first informant, father of the prosecutrix and was registered as Case Crime No. 1314 of 2022, under Section 376AB IPC and Section 5M/6 POCSO Act, Police Station- Sahibabad, District Ghaziabad. In the aforesaid F.I.R. applicant Danish has been nominated as solitary named accused.

The gravamen of the allegations made in the F.I.R. is to the effect that named accused enticed away the minor daughter of first informant and the daughter of the neighbors of first informant i.e. two prosecutrix and thereafter committed aggravated sexual assault upon them.

After aforesaid F.I.R. 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 namely-H was recorded under section 161 Cr.P.C., same is on record at page 26 of the paper book. The prosecutrix in her aforesaid statement has fully supported the F.I.R. However, the prosecutrix in her aforesaid statement has disclosed that she is aged about six years. Similarly, statement of the another prosecutrix namely- P was recorded under section 161 Cr.P.C. also which is on record at page 27 of the paper book. The prosecutrix in her aforesaid statement has also supported the F.I.R. Thereafter the wife of prosecutrix were requested for internal medical examination. However, the guardian of both the prosecutrix refused for their internal medical examination.

Ultimately, the statements of both the prosecutrix were recorded under section 164 Cr.P.C., The same is on record at page 37 of the paper book. Both the prosecutrix in their aforesaid statements have re-iterated their previous statement under section 161 Cr.P.C. During the course of investigation, Investigating Officer examined first informant and other witness under section 161 Cr.P.C. Witness so examined have substantially supported the F.I.R. During course of investigation, Investigating Officer recovered the Birth Certificate of the prosecutrix namely-H issued by Nagar Nigam, East Delhi in which the date of birth of the aforesaid prosecutrix is recorded as 11.5.2015. Similarly the birth certificate of the prosecutrix-D was also recovered. The same has also been issued by the Nagar Nigam, East, Delhi. The date of birth of the aforesaid prosecutrix recorded therein is 27.4.2015. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 20.8.2022. As such, the prosecutrix were aged about 7 years.

On the basis of above and other material collected by Investigating Officer including the statement of first informant and other witnesses examined under section 161 Cr.P.C. during course of investigation, he came to the conclusion that complicity of applicant is established in the crime in question. He, therefore, opined to submit charge sheet. Accordingly Investigating Officer submitted the charge sheet dated 3.9.2022, whereby applicant has been charge-sheeted under sections 376AB IPC and Section 5M/6 POCSO Act.

Learned counsel for applicant submits that though the applicant is named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. Irrespective of the material on record, present case is a case of malicious prosecution. To buttress his submission he has invited the attention of court to the averments made

partially in paragraph 18 and in paragraphs 19, 20 and 21 of the affidavit filed in support of the bail application. On the above premise, he contends that applicant is liable to be enlarged on bail.

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 22.8.2022. As such, he has undergone one year and eleven months of incarceration. Police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by the prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus 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 trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. Both the prosecutrix are young girls of tender age i.e. below 13 years. Provisions of Section 5M of POCSO Act are clearly attracted. Both the prosecutrix in their statements recorded under sections 161 and 164 Cr.P.C. have remained clear, categorical and consistent, qua the manner of sexual assault. Up to this stage, there is no such material on record on the basis of which it could be definitely inferred that the prosecution of applicant in the crime in question is false or malicious. Moreover, there is nothing to show that the innocence of applicant either. On the above above conspectus, no sympathy be shown by this Court in favour of applicant.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that objections raised by the learned A.G.A. in opposition to the present application for bail could not be dislodged by 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 comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

In view of above, the application fails and is liable to be rejected.

It is accordingly rejected.

Order Date :- 2.12.2023

Arshad