

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 43880 of 2023

Applicant :- Zaid

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

Counsel for Applicant :- Virendra Singh Tomar,Nadeem,Rajiv Sisodia

Counsel for Opposite Party :- G.A.,Danish

Hon'ble Rajeev Misra,J.

1. Heard Mr. Rajiv Sisodia, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Present application for bail came up for orders on 27.10.2023 and this Court passed the following order:-

"Heard Mr. Danish, Advocate holding brief of Mr. Rajiv Sisodia, the learned counsel for applicant and the learned A.G.A. for State.

This application for bail has been filed by applicant Zaid seeking his enlargement on bail in Case Crime No.199 of 2023, under Sections 363, 376 IPC and Section 3/4 Pocso Act, police station Chandpur, district Bijnor, during the pendency of trial.

At the very outset, learned A.G.A. submits that notice of the present application for bail has been served upon first informant-opposite party-2 on 08.10.2023. 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.

After some arguments, it transpires from the record that the age of the prosecutrix has been determined as per date of birth of the prosecutrix recorded in the mark-sheet of Class-VIII. The reliance so placed upon aforesaid document for determining the age of the prosecutrix is misconceived.

By virtue of the provisions contained in Section 94 of The Juvenile Justice (Care and Protection of Children) Act, 2015, the age of the prosecutrix could have been determined only with reference to the date of birth mentioned in any of the documents mentioned in Section 94 (2)(i) and 94 (2)(ii) of Act, 2015. Similar view has been taken by the Supreme Court in P. Yuvprakash Vs. State Represented by Inspector of Police 2023 SCC Online (SC) 846.

Learned A.G.A. submits that the charge-sheet has already been submitted against the applicant on 08.04.2023.

In view of above, Investigating Officer is directed to submit an application under Section 173(8) CrPC before the court below seeking permission of the court to conduct further investigation in the matter. After permission is accorded by the court concerned, Investigating Officer shall proceed to discover the date of birth of the prosecutrix recorded in the institution first attended by her. It shall be open for the Investigating Officer to collect any other document regarding the date of birth of the prosecutrix which may be in consonance with the provisions of Section 94 of Act, 2015. The said exercise shall be completed within a period of three weeks from today. The copy of the supplementary case diary shall be transmitted to this Court by Investigating Officer through the learned A.G.A. before the next date fixed.

Put up again as fresh on 20.11.2023."

4. Pursuant to above order dated 27.10.2023, Investigating Officer has conducted further investigation. The copy of the relevant papers of the supplementary case diary and the supplementary police report dated 07.11.2023 submitted under Section 173(2) Cr.P.C. have been brought on record by means of an affidavit filed by the learned A.G.A. Same is already on record.

5. It is an undisputed fact that the date of birth of the prosecutrix as recorded in the institution first attended by her is 04.04.2007. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 28.03.2023. As such, the prosecutrix was aged about 15 years, 11 months and 24 days on the date of occurrence. Learned counsel for applicant with reference to the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., copies of which are on record as Annexures 2 and 4 to the affidavit filed in support of present application for bail, submits that the prosecutrix is a willing and consenting party. As such, no offence as complained of can be said to have been committed by the applicant. With reference to the Medico Legal Examination Report of the prosecutrix, he submits that even the medical evidence does not support the charge sheet. On the above premise, he, therefore, contends that applicant is liable to be enlarged on bail.

6. 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 31.03.2023. As such, he has undergone more than 8 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.

7. Per contra, the learned A.G.A. has opposed the prayer for bail. He contends that since the prosecutrix was below 16 years of age on the date of occurrence, therefore, the consent of the prosecutrix is immaterial. By virtue of the law laid down by the Supreme Court in **X (Minor) Vs. The State of Jharkhand and Another 2022 LiveLaw (SC) 194** no sympathy be shown by this Court in favour of applicant. As such, the bail application is liable to be rejected.

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

9. 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 since 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.

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

11. It is accordingly **rejected**.

Order Date :- 11.12.2023

Vinay