

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44357 of 2023

Applicant :- Anil Kumar

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

Counsel for Applicant :- Rajnish Sahai Saxena, Ram Bahadur

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Anil Srivastava, the learned Senior Counsel assisted by Mr. Rajnish Sahai Saxena, 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-Anil Kumar seeking his enlargement on bail in Case Crime No. 171 of 2023, under Sections 376-D, 365 IPC and Sections 5/6 POCSO Act, Police Station-Khalilabad, District-Sant Kabir Nagar during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present application for bail has already been served upon first informant-opposite party 2 on 14.10.2023. 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.

5. Record shows that in respect of an incident, which is alleged to have occurred on 21.02.2023, a delayed FIR dated 22.02.2023 was lodged by first informant-Arvind Kumar (father of the prosecutrix) and was registered as Case Crime No. 171 of 2023, under Sections 376-D, 365 IPC, Sections 3(2)(V) & 3(2)(va) SC/ST Act and Sections 5/6 POCSO Act, Police Station-Khalilabad, District-Sant Kabir Nagar. In the aforesaid FIR, 2 persons namely (1) Anil Kumar (applicant herein) and Monu have been nominated as named accused.

6. The gravamen of the allegations made in the FIR is to the effect that named accused abducted the minor daughter of the first informant i.e. the prosecutrix namely - X aged about 13 years from her home and thereafter, deliberately dislodged her modesty.

7. After above-mentioned FIR 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 was recorded under Section 161 Cr.P.C. Same is on record at page 33 of the paper book. The prosecutrix in her aforesaid statement has not only fully supported the FIR but also detailed the manner of occurrence. Subsequent to above, the prosecutrix was requested for her internal medical examination. The Doctor, who medically examined the prosecutrix, found following injuries on her person which clearly denote commission of deliberate and forceful sexual assault:-

"Neha is well oriented to time place and person.

On internal examination a small bruise 1 cm above Lt. knee secondary sexual character are well developed.

On internal examination bleeding from hymen seen a small tear at 9 o' clock position of hymen.

X-Ray for age determination samples collected and sent for DNA analysis."

8. As per the medical opinion, the prosecutrix is said to be aged about 16 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record at page 47 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C.

9. Investigating Officer further recovered the Certificate issued by the Principal of the institution where the prosecutrix was studying. As per the said certificate, the date of birth of the prosecutrix is 01.01.2010. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 21.02.2023. As such, the prosecutrix was aged about 11 years on the date of occurrence. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of named accused is established in the crime in question. He, accordingly, submitted the charge sheet dated 10.03.2023 whereby all the named accused have been charge sheeted under Sections 376-D, 365 IPC and Sections 5/6 POCSO Act.

10. At the very outset, the learned A.G.A. contends that the bail application of co-accused Mohammad Hasan @ Monu has already been rejected by this Court vide order dated 02.05.2023 passed in

Criminal Misc. Bail Application No. 19627 of 2023 (Mohammad Hasan @ Monu Vs. State of U.P. and 3 Others). For ready reference, the same is reproduced hereinunder:-

"वर्तमान दाण्डिक प्रकीर्ण जमानत प्रार्थना पत्र, आवेदक मोहम्मद हसन उर्फ मोनू की ओर से मु० अ० सं० 171 सन 2023, अन्तर्गत धारा 376-डी, 365, 323 भा० दं० वि०, धारा 3;2 द्द;अद्दए 3;2 द्द;टंद्द एस० सी०/एस० टी० ऐक्ट तथा धारा 5/6 पाक्सो ऐक्ट, थाना खलीलाबाद, जिला सन्त कबीर नगर में जमानत पर मुक्त करने हेतु प्रस्तुत किया गया है।

आवेदक के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता ने तर्क प्रस्तुत किया कि आवेदक को इस प्रकरण में गलत एवं फर्जी तरीके से झूठा फँसाया गया है, उसने कथित अपराध कारित नहीं किया है, घटना की प्रथम सूचना रिपोर्ट राय मशविरा करके काफी विलम्ब से लिखायी गयी है जिसका कोई स्पष्टीकरण नहीं दिया गया है, वादी मुकदमा की लड़की एक अन्य लड़के के साथ मोटर साईकिल से गयी थी तथा उससे शारीरिक संबंध बना रही थी, इसी बीच आवेदक तथा अनिल वहाँ पहुँच गए तथा शोर किए तब गांव के लोग इकट्ठा हो गए, वादी मुकदमा ने गांव के लोगों के सामने उस लड़के को भगा दिया, घटनास्थल पर मोबाइल एवं चप्पल मिला जिसे पुलिस ले गयी किन्तु पुलिस ने मोबाइल का काल डिटेल् नहीं निकलवाया जिससे घटना में शामिल सही व्यक्ति का पता चल सके, वादी मुकदमा ने उस अन्य लड़के से अपनी बदनामी होने के कारण आवेदक को रंजिशन इस मामले में फँसा दिया, वादी मुकदमा के धारा 161 दं० प्र० सं० के बयान एवं पीड़िता के धारा 161 व 164 दं० प्र० सं० के बयान में काफी विरोधाभास है, आवेदक निर्दोष है तथा वह इस प्रकरण में दि० 22-2-2023 से कारागार में निरुद्ध है, इसलिए आवेदक को जमानत पर छोड़ दिया जाय।

विद्वान अपर शासकीय अधिवक्ता ने आवेदक के जमानत का प्रबल विरोध करते हुए तर्क प्रस्तुत किया कि आवेदक द्वारा वादी की अवयस्क लड़की को अपहरण करके उसको मारापीटा गया तथा अनुसूचित जाति का सदस्य जानते हुए उसके साथ सामूहिक बलात्कार किया गया, जो गम्भीर प्रकृति का अपराध है, आवेदक/अभियुक्त द्वारा कारित अपराध संज्ञेय एवं गम्भीर प्रकृति का है, इसलिए आवेदक को जमानत पर न छोड़ा जाय।

विद्वान अपर शासकीय अधिवक्ता के तर्कों के परिप्रेक्ष्य में पत्रावली पर उपलब्ध साक्ष्यों के आधार पर आवेदक को जमानत पर मुक्त किए जाने का कोई औचित्य नहीं है तथा यह जमानत आवेदन पत्र निरस्त किए जाने योग्य है।

तदनुसार वाद के गुण दोष पर बिना कोई टिप्पणी किए हुए, आवेदक का जमानत आवेदन पत्र निरस्त किया जाता है। "

11. On the above premise, the learned A.G.A. contends that since the bail application of co-accused has already been rejected coupled with the fact that applicant along with co-accused Mohammad Hasan @ Monu have been charge sheeted under Section 376-D IPC, the prosecutrix is a young girl of tender age as she is below 16 years of age as per the date of birth recorded in the educational record and the medical opinion, which clearly supports the ocular version, therefore, applicant does not deserve any indulgence by this Court.

12. When confronted with above, the learned Senior Counsel for

applicant made a fragile attempt but could not overcome the same.

13. Having heard, the learned Senior 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 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.

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

15. It is accordingly **rejected**.

Order Date :- 2.12.2023

Vinay