

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44125 of 2023

Applicant :- Satya Prakash Alias Fauji

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

Counsel for Applicant :- Radhey Shyam Yadav

Counsel for Opposite Party :- G.A.,Rajesh Kumar

Hon'ble Rajeev Misra,J.

1. Heard Mr. Radhey Shyam Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ajit Kumar, Advocate, holding brief of Mr. Rajesh Kumar, the learned counsel representing first informant-opposite party 2.

2. Perused the record.

3. Present application for bail came up for orders on 23.11.2023 and this Court passed the following order:-

"1. Heard Mr. Radhey Shyam Yadav, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rajesh Kumar, the learned counsel representing first informant.

2. After some arguments, it transpires that prosecutrix in her statement before the doctor who medically examined her as stated that she has solemnized marriage with the applicant.

3. In view of above, it is desirable to have the statement of the prosecutrix herself on the said issue before the Court.

4. Accordingly, the hearing of the present application is adjourned.

5. Matter shall re-appear as fresh on 30.11.2023.

6. Accordingly, the prosecutrix shall appear in person alongwith her parents on the date fixed.

7. The Superintendent of Police shall ensure the presence of the prosecutrix before this Court in person on aforementioned date"

4. Pursuant to above order dated 23.11.2023, the prosecutrix has been reproduced before Court in person by her mother and Sub-Inspector of Police namely Sompal Gangwar (P.N.O. No. 872530230) (Mob. No. 9758179635). The presentee of the

concerned Police Officer and the prosecutrix shall be endorsed on the order sheet by taking their signatures.

5. The prosecutrix has been examined by Court. In reply to the question as to whether she has solemnized marriage with the applicant, the prosecutrix has denied the same.

6. This application for bail has been filed by applicant-Satya Prakash Alias Fauji seeking his enlargement on bail in Case Crime No. 63 of 2023, under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act, Police Station-Maarhara, District-Etah during the pendency of trial i.e. Special Case No. 839 of 2023 (State Vs. Satya Prakash Alias Fauji) now pending in the Court of Special Judge, Exclusive Court (POCSO Act)/Additional Sessions Judge, Etah.

7. Record shows that in respect of an incident, which is alleged to have occurred on 15.04.2023, a delayed FIR dated 17.04.2023 was lodged by first informant-Smt. Guddo Devi (Mother of the prosecutrix) and was registered as Case Crime No. 63 of 2023, under Sections 363, 366 IPC, Police Station-Maarhara, District-Etah. In the aforesaid FIR, applicant-Satya Prakash Alias Fauji has been nominated as solitary named accused.

8. The gravamen of the allegations made in the FIR is to the effect that named accused enticed away the daughter of the first informant i.e. the prosecutrix namely X aged about 17 years.

9. 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 prosecutrix was recovered on 29.04.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 29 of the paper book. The prosecutrix in her aforesaid statement has not supported the FIR. Subsequent to above, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has resiled from her previous statement under Section 161 Cr.P.C. and has now alleged that her modesty was dislodged deliberately by the applicant. However, the Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. However, with regard to the private part of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Old torned"

10. As per the medical opinion, the prosecutrix is said to be aged about 16 to 17 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 53 of the paper book. The prosecutrix in her aforesaid statement has improved upon her previous statement under Section 161 Cr.P.C. and has now stated that deliberately the applicant made physical relations with her.

11. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the FIR. 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. He, accordingly, submitted the charge sheet dated 16.05.2023 whereby applicant has been charge sheeted under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act.

12. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. Referring to the statement of the prosecutrix recorded under Section 161 Cr.P.C., he submits that the prosecutrix is a willing and consenting party. It is then submitted that the prosecutrix has solemnized marriage with the applicant. On the above premise, it is urged by the learned counsel for applicant that though the prosecutrix was below 18 years of age on the date of her marriage with the applicant yet the marriage of the prosecutrix with the applicant shall not be void simply on that ground but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11(2) of the Hindu Marriage Act. However, up to this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void or for cancellation of marriage, therefore, the criminality, if any, committed by the applicant stands washed off.

13. 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 03.05.2023. As such, he has undergone more than 6 and 1/2 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.

14. Per contra, the learned A.G.A. for State and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that the prosecutrix is a young girl of tender age as she is aged about 16 to 17 years as per the medical opinion. Therefore, her consent, if any, is immaterial. The plea that the prosecutrix has solemnized marriage with the applicant is a fanciful argument but without basis raised by the learned counsel for applicant inasmuch as, the prosecutrix in her statements under Sections 161/164 Cr.P.C. has not stated that she has solemnized marriage with the applicant. It was in the light of aforesaid facts and circumstances, the Court passed the order dated 23.11.2023. The prosecutrix has appeared in person before Court and has categorically denied of her having solemnized marriage with the applicant. On the above premise, they submit that since applicant is guilty of dislodging the modesty of the prosecutrix who is a young girl of tender age, therefore, no sympathy be shown by this Court in favour of applicant. It is further submitted by the learned A.G.A. and the learned counsel representing first informant that medical opinion is not the conclusive proof of the age of a person but only a tentative idea and therefore, relaxation of 2 years is permissible. Reducing 2 years from the probable age of the prosecutrix i.e. 16 to 17 years, the prosecutrix shall be a minor girl aged about 14 to 15 years. Since the provisions of the POCSO Act are for the benefit of the child, therefore, the interpretation, which goes in favour of the child alone has to be taken into consideration while considering the guilt of an accused for an offence under the POCSO Act. It is thus urged that no good or sufficient ground is made out to enlarge the applicant on bail.

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

16. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusations made coupled with the fact that objections raised by the learned A.G.A. and the learned counsel representing first informant 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.

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

18. It is accordingly **rejected**.

Order Date :- 30.11.2023

Vinay