

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 44710 of 2023

Applicant :- Irshad Ahmad @ Naate

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

Counsel for Applicant :- Pradeep Kumar, Ayush Arora

Counsel for Opposite Party :- G.A., Siddhant Sahai, Yogesh Kumar Srivastava

Hon'ble Rajeev Misra, J.

Heard Mr. Pradeep Kumar, the learned counsel for applicant, the learned A.G.A. for State and Mr. Yogesh Kumar Srivastava, the learned counsel representing first informant-opposite party-4.

Supplementary affidavit filed by the learned counsel for applicant in Court today is taken on record.

Perused the record.

This application for bail has been filed by applicant Irshad Ahmad @ Naate seeking his enlargement on bail in Case Crime No.48 of 2023, under Section 376 IPC, Section 67-A Information Technology Act and Section 5/6 PocsO Act, police station Shahganj, district Prayagraj, during the pendency of trial.

Record shows that a first information report dated 02.06.2023 was lodged by the first informant/prosecutrix, which was registered as Case Crime No.0048 of 2023, under Section 376 IPC and Section 67-A Information Technology Act, police station Shahganj, district Prayagraj. In the aforesaid first information report, applicant Irshad Ahmad @ Naate (wrongly described as Irshad Rain @ Naate) has been nominated as solitary named accused.

The gravamen of the allegations made in the FIR is to the effect that the named accused Irshad Ahmad @ Naate first developed intimacy with the prosecutrix. He thereafter not only dislodged the modesty of the prosecutrix but also snapped obscene photographs of the prosecutrix and subsequently made them viral through Mobile No.9792109349.

After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned Case Crime Number in terms of Chapter XII CrPC. The statement of the prosecutrix was recorded under Section 161 CrPC, which

is on record at page 35 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR and has given better particulars and details with regard to the occurrence giving rise to the present criminal proceeding. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has rejoined her previous statement under Section 161 CrPC. However, the Doctor who medically examined the prosecutrix did not find any injury on her person so as to denote commission of deliberate or forcible sexual assault. However, as per the disclosure made by the prosecutrix the doctor has opined as follows :-

"Pain in lower abdomen."

With regard to private part of the prosecutrix, the Doctor has opined as follows :-

"Hymen -Absent"

Certain samples were collected from the body of the prosecutrix for pathological examination. However, copy of the supplementary medico legal report of the prosecutrix has not been brought on record. Ultimately, the statement of the prosecutrix was recorded under Section 164 CrPC, which is on record at page 70 of the paper book, wherein she has reiterated her previous statement recorded under Section 161 CrPC.

During course of investigation, Investigation Officer recovered the obscene photographs sent by the applicant on Mobile phones of Aashif-cousin brother (son of Phoofa), cousin brother (son of uncle) and Phoofa of the prosecutrix. Upon scrutiny, it was revealed that said obscene material was sent from Mobile No.9792109349. The said Mobile number belongs to applicant Irshad Ahmad @ Naate. Subsequently, obscene material was further collected by the Investigating Officer by means of pen-drives given by Yusuf and Aasif. He also obtained the requisite certificate in terms of Section 65-B of the Evidence Act from the aforesaid persons. Investigating Officer further obtained CDR report of Mobile number 9792109349 which belongs to Irshad Ahmad @ Naate (applicant herein). The said fact is explicit from CD Parcha No.16 of the Case-diary. The obscene material sent by the applicant was down-loaded and made part of the case diary. Investigating Officer during the course of investigation also recovered the certificate of the Principle of the institution from where the prosecutrix had appeared in Class-X examination. As per the said certificate, the date of birth of the prosecutrix recorded therein is 08.09.2006. The first information report giving rise to the present criminal proceeding was lodged on

02.06.2023. As such, the prosecutrix was said to be aged about 16 years and 08 months on the date of lodging of the first information report. On the basis of above and other material collected by the Investigating Officer during the course of investigation, he came to the conclusion that complicity of applicant is fully established in the crime in question. Accordingly, he submitted the charge-sheet dated 04.08.2023, whereby applicant has been charge-sheeted under Section 376 IPC, Section 67-A Information Technology Act and Section 5/6 Pocs0 Act.

Learned counsel for the applicant contends that though the applicant is a named as well as charge-sheeted accused, yet he is liable to be enlarged on bail. The prosecutrix is a willing and consenting party inasmuch as she was in consensual relationship with the applicant for the last six years. As per the medical opinion, no such signs were found on the body of the prosecutrix which may denote commission of deliberate and forcible sexual assault upon the prosecutrix. He, therefore, contends that applicant is liable to be enlarged on bail.

Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. The applicant is in custody since 20.07.2023. As such, he has undergone more than four months of incarceration. The police report under Section 173 (2) CrPC has already been submitted. As such, the entire evidence sought to be relied upon by the prosecution against the applicant stands crystalized. However, up to this stage, no such circumstance has emerged necessitating the custodial arrest of the 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 the trial.

Per contra, the learned A.G.A. and the learned counsel representing first informant have opposed the prayer for bail. They submit that since applicant is a named/charge-sheeted accused therefore, he does not deserve any indulgence by this Court. The learned A.G.A. contends that the date of birth of the prosecutrix recorded in the High School Certificate is 08.09.2006. The first information report giving rise to the present criminal proceeding was lodged on 02.06.2023. As such, the prosecutrix was aged about 16 years and 08 months on the date of lodging of the first information report. The prosecutrix is a young girl of tender age whose modesty has been repeatedly and deliberately dislodged by the applicant for a long period of time. Apart from above, the applicant has snapped obscene photographs of the prosecutrix and subsequently made it viral which have been recovered by the Investigating Officer and made part of the case-diary. He,

therefore, contends that in view of above, the conduct of the applicant, it is not only illegal but is also immoral. It is thus urged that no sympathy be shown by this Court in favour of applicant. As such, the present application for bail is liable to be rejected.

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, the learned counsel representing first informant, upon perusal of material brought on record, nature and gravity of offence, evidence, complicity of the accused, accusation 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, this Court does not find any good or sufficient ground to enlarge the applicant on bail.

As a result, this application for bail thus fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 22.11.2023.
Rks.