

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 45827 of 2023

Applicant :- Santosh Maurya

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

Counsel for Applicant :- Shabana Nizam

Counsel for Opposite Party :- G.A.,Prem Shankar,Sushma Soni

with

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40602 of 2023

Applicant :- Mohd. Shoeb Ahmad

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Ram Pravesh Yadav,Shashank Kumar

Counsel for Opposite Party :- G.A.,Sushma Soni

Hon'ble Rajeev Misra,J.

1. Counter affidavit filed by Mr. Prem Shankar, the learned counsel for first informant in Criminal Misc. Bail Application No. 40602 of 2023 (Mohd. Shoeb Ahmad Vs. State of U.P. and 4 others) in Court today is taken on record.

2. The learned counsel for applicant-Mohd. Shoeb Ahmad does not wish to file any rejoinder affidavit to the same. Consequently, the Court has proceeded to hear the matter.

3. Heard Miss. Shabana Nizam, the learned counsel for applicant--Santosh Maurya, Mr. Shashank Kumar, the learned counsel for applicant-Mohd. Shoeb Ahmad, the learned A.G.A. for State and Mr. Prem Shankar, the learned counsel for first informant.

4. Perused the record.

5. These applications for bail have been filed by applicants-

Santosh Maurya and Mohd. Shoeb Ahmad seeking their enlargement on bail in Case Crime No.210 of 2023 under Sections 376, 506, 120B I.P.C., Sections 3/7 (1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Section 67A I. T. Act and Sections 5/6 POCSO ACT, Police Station-Kotwali, District-Jaunpur, during the pendency of trial.

6. Record shows that an F.I.R. dated 27.07.2023 was lodged by first informant Dinesh Kumar (father of the prosecutrix) and was registered as Case Crime No.210 of 2023 under Sections 376, 506, 120B I.P.C., Sections 5/6 POCSO ACT, Sections 5 (1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 and Section 67A I. T. Act . In the aforesaid F.I.R. five persons namely Mohd. Soeb Ahmad, Santosh Maurya (applicants herein), Aftab, Abukaish Gulfam and Sadab have been nominated as named accused.

7. The F.I.R. giving rise to the present application for bail is a very long one. However, the genesis of the F.I.R. is that named accused Mohd. Shoeb Ahmad first developed intimacy with the prosecutrix and gained her confidence. He thereafter called the prosecutrix through his driver Santosh Maurya on a motorcycle. Thereafter he took the prosecutrix in his car to a lonely place and administered alcohol to her. Thereafter, Mohd. Shoeb committed deliberate sexual assault with the prosecutrix. He also snapped nude photographs of the prosecutrix and also made an obscene video of the same. On the strength of above, he coerced the prosecutrix to have successive sexual relations with her and thus repeatedly dislodged her modesty. The later part of the F.I.R. describes the other occurrences and the role of other accused.

8. After aforementioned F.I.R. was lodged, Investigating Officer

proceeded with statutory investigation of above-mentioned case crime number in terms of Chapter XII Cr.P.C. Thereafter, statement of prosecutrix was recorded under Section 161 Cr.P.C, copy of which is on record at page 35 of the paper book. In her aforesaid statement, the prosecutrix has not only supported the F.I.R. but also detailed the manner of occurrence giving rise to present applications for bail. As per the said statement Mohd. Shoeb Ahmad dislodged her modesty and made obscene video of the same. Subsequently, the prosecutrix was requested for her internal medical examination. The Doctor, who medically examined the prosecutrix, did not find any signs on the body of prosecutrix so as to denote commission of deliberate or forceful sexual assault. However, with regard to the private part of prosecutrix, the Doctor opined as under:

"Hymen - Old-Healed Torn Ruptured"

9. Ultimately, 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 not only reiterated her previous statement under Section 161 Cr.P.C. but has also disclosed that her modesty was dislodged in a hotel by using the I.D. of Salini Chaubey and Shadab. She has further stated that Santosh Maurya the driver of Mohd. Shoeb Ahmad prepared the obscene video. Named accused Mohd. Shoeb Ahmad coerced the prosecutrix for conversion. The prosecutrix has also disclosed the Mobile Number of Mohd. Shoeb Ahmad which is 7232932291. The role of dislodging the modesty of prosecutrix is assigned specifically to named accused Mohd. Shoeb Ahmad.

10. During course of investigation, Investigating Officer recovered the High School Certificate of the prosecutrix wherein

her date of birth is recorded as 05.04.2006. The F.I.R. giving rise to present criminal proceedings was lodged on 27.07.2023. As such, the prosecutrix was aged about 17 years, 3 months and 22 days on the date of occurrence. The Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. The father of the prosecutrix i.e. the first informant gave two obscene photographs of the prosecutrix which were sent on the Watts-App account of the first informant by named accused Mohd. Shoeb Ahmad. The same is evident from C.D. parch no. 15. Investigating Officer also collected the CDR reports of Mobile Nos. 7268094824 and 9453725525 belonging to the first informant i.e. father of the prosecutrix. As per the CDR report several calls were made from the several mobile numbers i.e. Mob. Nos. 7232932291, 7268094824, 9453725525 and 8808856759 on the mobile phones of the father of prosecutrix. Mobile NO. 7232932291 belongs to accused Mohd. Shoeb. Ahmad. Investigating Officer also obtained a report of Instagram I.D. @King.off-77 which belongs to named accused Mohd Shoeb Ahmad. The photographs recovered from aforesaid I.D. Accounts show how the prosecutrix was coerced for conversion to Instagram. Investigating Officer further discovered that applicants have criminal history of one case crime number each ie. Case Crime No. 207 of 2023 under Sections 376, 506, 120B I.P.C., Sections 3/7 (1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Section 67A I. T. Act and Sections 5/6 POCSO ACT, Police Station-Kotwali, District-Jaunpur. Applicants in their confessional statements have admitted their complicity in the crime in question which fact is corroborated from other material on record as noted above. 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 including applicants is fully established in the crime in question. Accordingly, he submitted the charge sheet dated 14.08.2023 whereby all the accused have been charge sheeted as under:

i. Santosh Maurya, Abu Kaish, Gulfam @ Multan and Shadab have been charge sheeted under Sections 376, 504 I.P.C., Sections 5/6 POCSO Act and Sections 3/5/1 U.P. Prohibition of unlawful conversion of Religions Act-2021 and Section 67 I T Act.

ii Minor Aftab has been charge sheeted under Sections 376, 506 I.P.C., Sections 5/6 POCSO Act and Sections 3/5/1 U.P. Prohibition of unlawful conversion of Religions Act-2021 and Section 67 I T Act. His case has been segregated and referred to the concerned Juvenile Justice Board.

11. At the very outset, the learned counsel for applicants contend that co-accused Sadab @ Ayan Khan has already been enlarged on bail by this Court vide order dated 25.09.2023 passed in Criminal Misc. Bail Application No. 41387 of 2023 (Sadab @ Ayan Khan Vs State of U.P. and 3 others). For ready reference, the same is reproduced herein-under:

"1. Dr. Sushma Soni Advocate filed her power today on behalf of the informant, which is taken on record.

2. Heard Sri Deepak Singh Yadav, learned counsel for the applicant, Dr. Sushma Soni, learned counsel for the informant and Sri P.K. Giri, learned AAG assisted by Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 210 of 2023, under Sections 376, 506, 120-B IPC & 5/6 POCSO Act & 3/5(1) U.P. Prohibition of Unlawful Conversion of Religion Act & 67(A) I.T. Act, Police Station- Kotwali, District- Jaunpur, during pendency of the trial in the court below.

4. FIR of the present case was lodged on 27.07.2023 against applicant and four others and according to the FIR, co-accused Shoeb Ahmad was for

last two years sexually exploiting the minor daughter of the informant and number of times he has taken her to the hotel and as per the FIR, applicant and other accused persons remained present outside the hotel.

5. It is further mentioned in the FIR that co-accused Shoeb Ahmad also prepared indecent videos and photographs of the victim and also compelled her to change her religion.

6. It is further mentioned in the FIR that co-accused Shoeb forcibly joined the victim to Group-77 on instagram. It is further mentioned in the FIR that co-accused Shoeb also involved with other Hindu girls for his love jehad mission.

7. Learned counsel for the applicant submitted that it appears from the perusal of the FIR and from the statements of the victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. that all the allegations of rape, conversion of religion and love jehad is against co-accused Shoeb and only allegation against the applicant is that on 22.04.2023 when co-accused Shoeb was committing rape with the victim in the hotel room then applicant and other accused persons were also present outside the hotel and except this, there is no other allegation against the applicant.

8. He further submitted that applicant is not having any previous criminal history and he is in jail since 02.08.2023.

9. Per contra, learned AAG as well as learned counsel for the informant opposed the prayer for bail and submitted that applicant is the part of a racket, who involved in conversion of religion of Hindu girls to Islam and applicant also facilitated the principal accused Shoeb Ahmad in the present matter but both the counsels could not dispute the fact that in the FIR and in the statements of the prosecutrix recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. entire allegation of love jehad, rape and conversion of religion is against the co-accused Shoeb Ahmad and only allegation against the applicant is that on 22.04.2023 when co-accused Shoeb Ahmad was committing rape with the victim in the hotel room then applicant along with other accused persons was present outside the hotel. Both the counsels further could not dispute the fact that except the present case, there is no other criminal history of the applicant.

10. I have heard learned counsel for the parties and perused the record of the case.

11. Although, in the FIR serious allegations of rape, conversion of religion and love jehad have been levelled but all these allegations are against co-accused Shoeb Ahmad and in both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. also victim made all these allegations against co-accused Shoeb Ahmad and only allegation against the applicant in the FIR and in both the statements of the victim is that on 22.04.2023 he was also present outside the hotel while co-accused Shoeb Ahmad was committing rape with the victim in the hotel room.

12. Further, although, from the record, it reflects that during the course of commission of offence, co-accused Shoeb Ahmad also prepared indecent

videos and photographs of the victim with the help of co-accused Santosh Maurya but there is no allegation against the applicant that either he prepared any indecent videos and photographs of the victim or posted the same on social media and neither there is any allegation that he also involved in joining the victim to King 77 group, who involved in love jihad.

13. Further, applicant is not having any criminal history and he is in jail since 02.08.2023.

14. Therefore, considering the facts and circumstances of the case discussed above, in my view applicant is entitled to be released on bail.

15. Accordingly, without expressing any opinion on the merits of the case, the instant bail application is allowed.

16. Let the applicant- Sadab @ Ayan Khan be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:-

(i) The applicant shall appear before the trial court on the dates fixed, unless his personal presence is exempted.

(ii) The applicant shall not directly or indirectly, make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

(iii) The applicant shall not indulge in any criminal and anti-social activity.

17. In case of breach of any of the above condition, the prosecution will be at liberty to move an application before this Court for cancellation of the bail of the applicant.

18. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of bail application and the said observations shall have no bearing on the merits of the case during trial.

Order Date :- 25.9.2023 . "

12. Similarly other co-accused Gulfam @ Multan and Abukaish have already been enlarged on bail by this Court vide order dated 03.10.2023 passed in Criminal Misc. Bail Application No. 41091 of 2023 (Gulfam @ Multan and another Vs State of U.P. and 3 others). For ready reference, the same is reproduced herein-under:

"Shri P.K. Giri, learned Additional Advocate General contends that the police authorities in compliance of the directions issued by this Court in

Criminal Misc. Bail Application No. 46998 of 2020 (Junaid Vs State of U.P. and another) reported at 2021 (6) ADJ 511 and with a view to implement the provisions of POCSO Act, 2012 read with POCSO Rules, 2020, have served the bail application upon the victim/legal guardian as well as upon the CWC.

By means of the bail application the applicants have prayed to be enlarged on bail in Case Crime No.210 of 2023 at Police Station-Kotwali, District-Jaunpur under Sections 376, 506, 120-B IPC and Section 3/5(1) of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, Section 67-A of I.T. Act and Section 5/6 of the POCSO Act. The applicants are in jail since 28.07.2023.

The bail application of the applicants were rejected by the learned trial court on 18.08.2023.

The following arguments made by Shri Babhru Vahan Singh, learned counsel on behalf of the applicants, which could not be satisfactorily refuted by Ms. Sushma Soni, learned counsel for the informant and Shri P.K. Giri, learned Additional Advocate General from the record, entitle the applicant for grant of bail:

1. Learned counsel for the applicant contests the minority of the victim as depicted in the prosecution case.

2. The victim was wrongly shown as a minor of 17 years of age in the F.I.R. only to falsely implicate the applicant under the stringent provisions of the POCSO Act and cause his imprisonment.

3. Learned counsel for the applicant contests the age of the victim set out in the prosecution case in light of the judgement of this Court in Monish Vs. State of U.P. and others (Criminal Misc. Bail Application No. 55026 of 2021) on the following grounds:

(i) There are material contradictions in the age of the victim as recorded in various prosecution documents.

(ii) The victim in her statement under Section 161 and 164 Cr.P.C. has asserted that she is 17 years of age.

(iii) Medico-legal examination (not the age determination test) records that the victim is 17 years of age.

(iv). The medical report drawn up as per the latest scientific criteria and medical protocol to determine the age of the victim opines that she is 18 years of age. The victim is in fact a major.

4. The victim was intimate with the principal offender Shoaib.

5. The FIR as well as the statements of the victim attribute the role of commission of rape with her to the said principal offender Shoaib.

6. No indecent video of the victim was captured, stored or circulated by the applicants.

7. There is no evidence of commission of criminal conspiracy against the applicants.

8. It is clarified that the role of principal offender Shoaib and all the accused persons who were part of the overt acts of taking indecent photographs or storing or circulating them is distinguishable from that of the applicants.

9. The applicants claim congruency in role and seek parity in relief granted to the co-accused Sadab @ Ayan Khan who has been enlarged on bail by this Court by order dated 25.09.2023 in Criminal Misc. Bail Application No. 41387 of 2023.

10. The applicants do not have any criminal history apart from this case.

11. The applicants are not a flight risk. The applicants being law abiding citizens have always cooperated with the investigation and undertake to join the trial proceedings. There is no possibility of their influencing witnesses, tampering with the evidence or reoffending.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicants- Gulfam @ Multan and Abukaish be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicants will not tamper with the evidence or influence any witness during the trial.

(ii) The applicants will appear before the trial court on the date fixed, unless personal presence is exempted.

Order Date :- 3.10.2023 "

13. It is then contended that prosecutrix is aged about 17 years. She is a willing and consenting party. There is nothing on record to show that the prosecutrix was kidnapped, abducted or enticed away by the applicants for forcibly dislodge her modesty. Therefore, no offence as complained of can be said to have been committed by the applicants. Similarly situated and circumstanced co-accused have already been enlarged on bail by this Court. There is no such distinguishing feature on the basis of which case of

present applicants can be so distinguished from the aforesaid bailed out co-accused so as to deny them bail. On the above premise, the learned counsel for applicants contend that in view of above and for the facts and reasons recorded in the bail orders of co-accused, applicants are also liable to be enlarged on bail on the ground of parity.

14. Even otherwise applicants have one criminal history each. However, the same has been sufficiently explained. Applicants are in custody since 27.07.2023. As such they have undergone more than four and a half months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicants, therefore the entire evidence sought to be relied upon by the prosecution against applicants stands crystallised. Upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicants during the pendency of trial. On the above premise, the learned counsel for applicants thus submit that applicants are liable to be enlarged on bail. In case applicants are enlarged on bail, they shall not misuse the liberty of bail and shall co-operate with the trial.

15. Per contra, the learned A.G.A. for State and the learned counsel for first informant have vehemently opposed the prayer for bail. They submit that since the applicants are named as well as charge-sheeted accused, therefore they do not deserve any indulgence by this Court. They further submit that prosecutrix is a young girl aged about 17 years, 3 months and 22 days on the date of lodging of the F.I.R. As such, she is below 18 years of age. As per statements of the prosecutrix recorded under Sections 161/164 she has categorically alleged that not only her modesty was dislodged by applicant Mohd. Shueb Ahmad but also her nude

photographs were also snapped by applicant/accused Mohd. Shoeb Ahmad. Accused applicant Santosh Maurya, who is the driver of co-accused Mohd. Shoeb Ahmad is said to be guilty of preparing the obscene video of prosecutrix as per the statement of the prosecutrix recorded under Section 164 Cr.P.C. The medical evidence also corroborates the statement of the prosecutrix. Apart from above, the learned AGA further submits that obscene photographs were collected by the Investigating Officer (given by the father of prosecutrix) which fact is clearly established from CD Parcha No. 15. Accordingly, applicants have been charge sheeted under Sections 67A of the I.T Act. Applicant Santosh Maurya has actively co-operated in the crime. As such, he also does not deserve any consideration by this Court. Applicant Mohd. Shoeb Ahmad has not only dislodged the modesty of a young girl but has also snapped her obscene photographs and made them viral which is highly immoral. Applicants are habitual offenders as they have criminal history of one case each regarding similar criminality committed by them earlier. There is nothing on record to show the innocence of applicants or false or malicious prosecution of applicants. They therefore submit that no sympathy be shown by this Court in favour of applicants. As such, the bail applications are liable to be rejected.

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

17. Having heard the learned counsel for applicants, the learned A.G.A. for State, upon consideration of material on record, evidence, gravity and nature of offence, accusations made as well as complicity of applicants coupled with the fact that the role of applicants is clearly distinguishable from other accused, who have been enlarged on bail, as such, no parity can be claimed by

applicants from the bail orders granting bail to the co-accused, the role of the co-accused, who have been granted bail is clearly distinguishable from the present applicants, 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 applicants, therefore irrespective of the varied submissions urged by the learned counsel for applicants in support of present applications for bail, this Court does not find any good or sufficient ground to enlarge the applicants on bail.

18. As a result, present applications for bail fail and are liable to be rejected.

19. They are accordingly **rejected**.

Order Date :- 5.12.2023

YK