

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47029 of 2023

Applicant :- Prince

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

Counsel for Applicant :- Ram Swaroop

Counsel for Opposite Party :- G.A.,Rakesh Kumar Srivastava

Hon'ble Rajeev Misra,J.

Heard Mr. Arvind Kumar Srivastava, Advocate, holding brief of Mr. Ram Swaroop, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rakesh Kumar Srivastava, the learned counsel for opposite party-2.

Perused the record.

This application for bail has been filed by applicant Prince, seeking his enlargement on bail in Case Crime No. 225 of 2023, under sections 363, 366, 376 IPC, 3/4 (2) POCSO Act, Police Station- Shahganj, District-Jaunpur, during pendency of trial.

Record shows that in respect of an incident which is alleged to have occurred on 5.8.2023, a belated F.I.R. dated 6.1.2023 was lodged by first informant Saroja Devi, mother of the prosecutrix and was registered as Case Crime No. 225 of 2023, under sections 363, 366, 376 IPC, 3/4 (2) POCSO Act, Police Station- Shahganj, District-Jaunpur. In the aforesaid F.I.R. applicant has been nominated as solitary named accused.

Gravamen of the allegations made in the F.I.R. is to the effect that named accused enticed away the minor daughter of the first informant, i.e. prosecutrix aged about 13 years who is a student of Class-VI on 5.8.2023.

After aforesaid F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. However, the prosecutrix in her statement under sections 161/164 Cr.P.C. has not supported the F.I.R. To the contrary as per aforesaid statements of the prosecutrix, she appears to be willing and consenting party. Furthermore, there is no medical report, inasmuch as she refused

for her internal medical examination.

Present application came up for orders on 3.11.2023 and this Court passed the following order;

"Sri Rakesh Kumar Srivastava, has filed vakalatnama on behalf of informant, is taken on record.

Learned AGA and learned counsel for informant pray for and are allowed three weeks' time to file counter-affidavit.

Special Judge (POCSO)/C.J.M., Jaunpur, is directed to get ossification test of the victim conducted through C.M.O., Jaunpur, and send duly certified photostat copy of the same to this court.

Learned counsel for applicant has submitted that from the statement of victim recorded under Section 164 Cr.P.C., it appears that the victim is clearly consenting party. Despite being minor, she has not made any allegation of commission of offence of rape against the applicant. She has stated that she left her house on her own and went to Lucknow Station where her mama came and took her back. There is no other allegation leveled against the applicant. The applicant is in jail since 14.09.2023 and he has no criminal history to his credit.

On the other hand learned A.G.A has opposed the prayer for bail.

Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicant; keeping in view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side; applicant being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of Dataram Singh Vs. State of U.P. and another reported in (2018) 3 SCC 22 and recent judgment dated 11.07.2022 of the Apex Court in the case of Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail.

Let the applicant, Prince, involved in Case Crime No. 225 of 2023 under Sections- 363, 366, 376 IPC and 3/4(2) of POCSO Act, Police Station- Shahganj, District- Jaunpur, be released on interim bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned till the next date of listing subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of his absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the Court on the date fixed in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

Put up this case on 12.12.2023 before appropriate Court.

In failure to comply this order, the interim bail granted to the applicant till the next date of listing shall stand cancelled and he shall be taken into custody forthwith"

Pursuant to above order dated 3.11.2023, the medical determination of age of the prosecutrix was undertaken. As per the medical opinion, the prosecutrix is said to be aged about 16 years. On the above premise, the learned counsel for applicant contends that since the prosecutrix is a willing and consenting party, aged about 16 years and there being no medical evidence to support the aggravated sexual assault or penetrative sexual assault upon the prosecutrix, therefore, applicant is liable to be enlarged on bail.

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 14.9.2023. As such, he has undergone two months of incarceration. Police report in terms of Section 173 (2)

Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicant stands crystalized. However, upto this stage, no such, circumstance has emerged necessitating the custodial arrest of 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 trial.

Per contra, the learned A.G.A. and the learned counsel for first informant have opposed the prayer for bail. They submit that since applicant is a named as well as charge sheeted accused, therefore he does not deserve any indulgence by this Court. They submit that as per medical opinion, the prosecutrix is below 16 years of age. It is an undisputed fact that prosecutrix is a student of Class-VI, therefore, applicant does not deserve any indulgence by this Court. Attention of the Court was also invited to the judgement of Supreme Court in **X(Minor) Vs/State of Jharkhand and Anr., 2022 Live Law (SC) 194**. On the above premise, it is thus urged that considering the age of the prosecutrix even if she is willing and consenting party, no sympathy be shown by this Court in favour of applicant. The bail application is therefore, 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, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that objections raised by the learned A.G.A. and the learned counsel for first informant in opposition to the present application bail could not be dislodged by learned counsel for applicant, therefore irrespective of the varied submissions urged by learned counsel for applicant in support of the present application for bail, but without making any comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

In view of above, the application fails and is liable to be rejected.

It is accordingly **rejected**.

Order Date :- 12.12.2023

Arshad