

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 46567 of 2023

**Applicant :-** Dilshad Alias Dillu

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Raj Kamal Tripathi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Misra,J.**

1. Heard Mr. Raj Kamal Tripathi, 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-Dilshad @ Dillu seeking his enlargement on bail in Case Crime No. 287 of 2023, under Sections 376, 506 IPC, Police Station-Rawatpur, District-Kanpur Nagar during the pendency of trial.

4. Record shows that an FIR dated 05.08.2023 was lodged by the first informant/prosecutrix-Tanu Yadav and was registered as Case Crime No. 287 of 2023, under Sections 376, 506 IPC, Police Station-Rawatpur, District-West (Commissionerate) Kanpur Nagar. In the aforesaid FIR, applicant-Raja @ Dilshad has been nominated as solitary named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused by playing fraud and deceit developed intimacy with the prosecutrix. The FIR further records that the applicant applicant by alleging that he is taking the prosecutrix to meet his family members is alleged to have given a cold drink to the prosecutrix which contained some stupefying substance. As a consequence thereof the prosecutrix became unconscious and then the applicant made physical relations with the prosecutrix. The FIR also records that certain obscene photographs of the prosecutrix were snapped by the applicant.

6. 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., which is on record at page 26 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR and has further

given details regarding the manner of occurrence. She has further disclosed that the occurrence occurred in June, 2023. The prosecutrix further disclosed that her date of birth is 05.07.2002. Thereafter, the prosecutrix was requested for her internal medical examination. However, the prosecutrix refused for her internal medical examination. Upon external examination, the Doctor did not find any fresh visible injury on the body of the prosecutrix. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. which is on record at page 25 of the paper book. The prosecutrix in her aforesaid statement has reiterated her previous statement under Section 161 Cr.P.C., however with better particulars and details.

7. During course of investigation, Investigating Officer recovered the High School Certificate of the prosecutrix wherein her date of birth is recorded as 05.07.2002. 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 15.09.2023 whereby applicant has been charge sheeted under Sections 376 506 IPC.

8. Learned counsel for applicant contends that though the applicant is named as well as charge sheeted accused yet he is liable to be enlarged on bail. Applicant is innocent. He has falsely implicated in the aforementioned case crime number. The prosecutrix is major. The prosecutrix herself joined the applicant. As such, she is a willing and consenting party. There is delay in lodging the FIR which remains unexplained. He, therefore, contends that in view of above, the applicant is liable to be enlarged on bail.

9. 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 09.08.2023. As such, he has undergone more than 3 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, therefore, 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.

10. Per contra, the learned A.G.A. has opposed the prayer for

bail. He contends that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. Referring to the statements of the prosecutrix as noted above, the learned A.G.A. contends that the prosecutrix had remained consistent to the effect that applicant has dislodged her modesty only once and that to without her consent. Up to this stage, there is nothing on record to infer that the prosecutrix is a willing and consenting party. No such material has been brought on record to show the innocence of the applicant or to establish that the prosecution of the applicant is false and malicious. The prosecutrix is a young girl aged about 21 years whose modesty has been dislodged by the applicant by playing fraud and deceit. As such, no sympathy be shown by this Court in favour of applicant. He thus submits that the bail application is liable to be rejected.

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

12. Having heard, the learned 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 since 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.

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

14. It is accordingly **rejected**.

**Order Date :- 22.11.2023**

Vinay