

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48321 of 2023

Applicant :- Avanish

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

Counsel for Applicant :- Saurabh Kumar Pandey,Akhilendra Yadav

Counsel for Opposite Party :- G.A.,Sudhanshu Kumar Singh

Hon'ble Rajeev Misra,J.

1. Heard Mr. Akhilendra Yadav, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Instant application for bail has been filed by applicant-Avanish seeking his enlargement on bail in Case Crime No. 480 of 2023 under Sections 376, 313, 506 I.P.C., Sections 3/4 POCSO Act, Police Station-South, District-Firozabad, during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present application for bail has been served upon first informant-opposite party 2 on 04.11.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 2 to oppose this application for bail.

5. Record shows that an F.I.R. dated 19.07.2023 was lodged by first informant Ramkhilari(father of the prosecutrix) and was registered as Case Crime No. 480 of 2023 under Sections 376, 313, 506 I.P.C., Sections 3/4 POCSO Act, Police Station-Firozabad South, District-Firozabad, In the aforesaid F.I.R. applicant-Avanish has

been nominated as solitary named accused.

6. The gravamen of the allegations made in the F.I.R. is to the effect that named accused deliberately and forcibly dislodged the modesty of the prosecutrix repeatedly for the last six months prior to the lodging of F.I.R.

7. After aforementioned F.I.R. was registered, Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 24 of the paper book. The prosecutrix in her aforesaid statement has fully supported the F.I.R. She has further stated that she is in family way for the last two months on account of the act of applicant, which fact was also disclosed by the prosecutrix to the mother of the applicant. 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 supported the F.I.R. and has reiterated her earlier statement under Section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix did not find any sign on the body of the prosecutrix so as to denote commission of deliberate or forceful sexual assault. With regard to private part of the prosecutrix, the Doctor opined as under:

"Hymen - ruptured (Old torn)

8. Certain samples were taken from the body of the prosecutrix. However, as per supplementary medico legal report, the result of the same are negative. The prosecutrix was not found in family way. However, the Gravindex Test was found weakly positive. Ultimately, the statement of prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 46 of the paper

book. The prosecutrix in her aforesaid statement has supported the F.I.R..

9. During course of investigation, the Investigating Officer recovered the certificate from the Headmaster of concerned School where the prosecutrix had studied from Class-III. As per said certificate, the date of birth of the prosecutrix recorded in the record of the said institution is 05.03.2007. The F.I.R. giving rise to present criminal proceedings was lodged on 19.07.2023. As such, on the date of lodging of the F.I.R., the prosecutrix was aged about 16 years, 10 months and 14 days.

10. 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. Investigating Officer also recorded the statement of one witness Neelam (Neeru), who in her statement has stated that she conducted abortion of the prosecutrix as she was bleeding profusely. On the basis of above and other material collected by Investigating Officer during the 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 31.07.2023 whereby applicant has been charge sheeted under Sections 376, 313, 506 I.P.C. and Sections 3/4 POCSO Act.

11. Learned counsel for applicant submits that though applicant is a named and charge-sheeted accused yet he is liable to be enlarged on bail. The prosecutrix was in consensual relationship with the applicant inasmuch as she was having physical relations with applicant for the last six months, which fact is clearly established from the prosecution story as unfolded in the F.I.R. Further more, the prosecutrix is above 16 years of age. Medical opinion does not

support the ocular version of this occurrence inasmuch as no signs were found on the body of the prosecutrix by the Doctor, who medically examined her denoting commission of deliberate or forceful sexual assault. He therefore contends that in view of above, the prosecutrix was a willing and consenting party. As such, applicant is liable to be enlarged on bail.

12. 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 custody since 25.07.2023. As such, he has undergone more than four months of incarceration. Police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted, therefore the entire evidence sought to be relied upon by the prosecution against applicant stands crystallized. However, upto this stage, no such incriminating circumstance has emerged from recrd 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.

13. Per contra, the learned A.G.A. for State has vehemently opposed the prayer for bail. He submits that since the applicant is a named and charge sheeted accused therefore, he does not deserve any indulgence by this Court. The prosecutrix is a young girl aged about 16 years, 10 months and 14 days, whose modesty has been dislodged repeatedly by the applicant. Since the prosecutrix is a young girl of tender age and is minor therefore her consent if any is wholly immaterial. As per the material on record, it is evident that the prosecutrix came in family way. Ultimately, the fetus was got aborted which fact is established from the statement of Neelam (Neeru). It is on account of above that applicant has been charge-

sheeted under Section 313 I.P.C. On the above conspectus, the learned A.G.A. contends that no sympathy be shown by this court in favour of applicant.

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

15. Having heard the learned counsel for applicant, 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 applicant coupled with the fact that 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, therefore irrespective of the varied submissions urged by the learned counsel for applicant in support of present application for bail, this Court does not find any sufficient or good ground to enlarge the applicant on bail.

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

17. It is accordingly **rejected**.

Order Date :- 30.11.2023

YK