

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47825 of 2023

Applicant :- Saddam Husain

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

Counsel for Applicant :- Vijay Prakash Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vijay Prakash Chaturvedi, 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-Saddam Husain seeking his enlargement on bail in Case Crime No. 49 of 2023, under Section 376 IPC and Sections 5/6 POCSO Act, Police Station-Golhaura, District-Siddharth Nagar during the pendency of trial.

4. At the very outset, the learned A.G.A. submits that notice of present application for bail has already been served upon first informant-opposite party 2 on 01.11.2023. 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 FIR dated 26.04.2023 was lodged by the first informant/prosecutrix namely X and was registered as Case Crime No. 49 of 2023, under Section 376 IPC, Police Station-Golhaura, District-Siddharth Nagar. In the aforesaid FIR, applicant-Saddam Husain has been nominated as solitary named accused.

6. The gravamen of the allegations made in the FIR is to the effect that named accused by extending false promise of marriage repeatedly dislodged the modesty of the prosecutrix for the last 2 years. The FIR further records that subsequently on the dictates of elders of the village, the applicant agreed to solemnize marriage with the prosecutrix. However, ultimately, he resiled from the same.

7. 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. Same is on record at page 24 of the paper book. The prosecutrix in her aforesaid statement has fully supported the FIR. 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 rejoined her previous statement under Section 161 Cr.P.C. However, the Doctor, who medically examined the prosecutrix, did not find any injury on her body so as to denote commission of deliberate or forceful sexual assault. However, with regard to the private part of the prosecutrix, the Doctor has opined as under:-

"Hymen - Old torn healed tags."

8. Certain samples were collected from the body of prosecutrix for pathological examination. However, according to the learned A.G.A., the results of the same are in negative. As per the medical opinion, the prosecutrix is said to be aged about 19 years. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. Same is on record at page 35 of the paper book. The prosecutrix in her aforesaid statement has re-affirmed her previous statement under Section 161 Cr.P.C.

9. During course of investigation, Investigating Officer recovered the extract of the Family Register of the prosecutrix wherein her date of birth is mentioned as 16.08.2003. The FIR giving rise to present criminal proceedings was lodged on 26.04.2023. As such, the prosecutrix was aged about 20 years and 3 months on the date FIR was lodged. 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 31.07.2023 whereby applicant has been charge sheeted under Sections 376 IPC and Sections 5/6 POCSO Act.

10. 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. With reference to the material on record, he contends that as per the medical opinion, the prosecutrix was aged about 20 years on the date of her medical examination i.e. 28.04.2023. As per the date of birth recorded in the Family Register i.e. 16.08.2003, the prosecutrix was aged about 20 years and 3 months on the date of lodging of the FIR i.e. 26.04.2023. As such, the prosecutrix is major. He has then invited the attention of Court to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. and on basis thereof, he contends that the FIR is highly belated as the dates of occurrences have not been mentioned in the FIR.

Moreover, since the prosecutrix was in consensual relationship with the applicant, therefore, no criminality can be said to have been committed by applicant. He, therefore, submits that applicant is liable to be enlarged on bail.

11. 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 19.05.2023. As such, he has undergone more than 6 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 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.

12. 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. The prosecutrix is a young girl aged about 19 years whose modesty has been repeatedly and continuously dislodged by the applicant for the last two years. The applicant developed affinity with the prosecutrix by extending a promise of marriage from which, he has subsequently resiled inasmuch as, the applicant has failed to perform marriage with the prosecutrix up to this stage. The prosecutrix is a young girl aged about 20 years, whose life has been put into peril. Reference has also been made to the following judgments of the Supreme Court in (i). **Sonu alias Subhash Kumar Vs. State of U.P.**, 2021 SCC OnLine SC 181, (ii). **Pramod Suryabhan Pawar Vs. State of Maharashtra**, 2019 SCC OnLine SC 1073, (iii). **Maheshwar Tigga Vs. State of Jharkhand** (2020) 10 SCC 108, (iv). **Mandar Deepak Pawar Vs. State of Maharashtra and Another**, 2022 Live Law (SC) 649 & (v). **Naim Ahmed Vs. State (NCT of Delhi)**, 2023 SCC OnLine SC 89. On the aforesaid premise, the learned A.G.A. contends that the issue regarding promise of marriage is a factual issue and can be decided only during the course of trial. However, since there is nothing on record to even prima-facie show that no promise of marriage was extended by applicant or the prosecution of applicant is false or malicious, therefore, applicant does not merits grant of bail. He, therefore, contends that in view of above no sympathy be shown by this Court in favour of applicant. He thus submits that the bail application is liable to be rejected.

13. When confronted with above, the learned counsel for

applicant could not overcome the same.

14. 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.

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

16. It is accordingly **rejected**.

Order Date :- 21.11.2023

Vinay