

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 47753 of 2023

Applicant :- Ajeet Ram

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

Counsel for Applicant :- Ram Pravesh Yadav, Shashank Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Shashank Kumar, the learned counsel for applicant and the learned A.G.A. for State.
2. Second supplementary affidavit filed by learned counsel for applicant in court today is taken on record.
3. Perused the record.
4. Instant application for bail has been filed by applicant-Ajeet Ram seeking his enlargement on bail in Case Crime No. 178 of 2022 under Sections 363, 366, 376 I.P.C. and Sections 3/4 POCSO Act, Police Station-Nagra, District-Ballia, during the pendency of trial.
5. At the very outset, the learned A.G.A. submits that notice of present bail application has been served upon first informant/opposite party-2 on 19.10.2023. 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.
6. Record shows that in respect of an incident, which is alleged to have occurred on 29.05.2023, a delayed F.I.R. dated 29.05.2023 was lodged by first informant Smt. Anjoo Devi (mother of the

prosecutrix) and was registered as Case Crime No. 178 of 2022 under Sections 363, 366 I.P.C., Police Station-Nagra, District-Ballia. In the aforesaid F.I.R. one Ajeet Ram (applicant herein), has been nominated as solitary named accused.

7. The gravamen of the allegations made in the F.I.R is to the effect that the named accused Ajeet Ram (applicant herein) is alleged to have enticed away the daughter of first informant i.e. prosecutrix namely X aged about 16 years.

8. Subsequent to the aforesaid F.I.R., Investigating Officer proceeded with statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C. The prosecutrix was recovered on 11.09.2023. Thereafter the statement of the prosecutrix was recorded by the Investigating Officer under Section 161 Cr.P.C, which is on record as Annexure SA-2 to the supplementary affidavit. In her aforesaid statement, the prosecutrix has not supported the F.I.R. To the contrary, she has stated that she knew the applicant for the last three years and was having love affair with the applicant. The prosecutrix has further stated that she used to talk to applicant on telephone. She further stated that she left her home alone and went to applicant and thereafter accompanied him to Dehli where she solemnized marriage with applicant. On account of above, the parties were in cohabitation as husband and wife. Thereafter, the prosecutrix was requested for her internal medical examination. However, the same was refused by her. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., copy of which is on record at page 17 of the aforementioned supplementary affidavit. The prosecutrix in her aforesaid statement, has reiterated her previous statement under Section 161 Cr.P.C..

9. During course of investigation, Investigating Officer recovered the transfer certificate of the prosecutrix, wherein the date of birth of the prosecutrix is recorded as 01.02.2006. The occurrence giving rise to present criminal proceedings occurred on 29.05.2023. As such, the prosecutrix was 17 years 4 months and 28 days of age on the date of occurrence. Investigating Officer examined first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially supported the F.I.R. 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. Since the prosecutrix was below 18 years of age therefore provisions of POCSO Act are also attracted. However, investigating is still said to be pending.

11. Learned counsel for applicant contends that though the applicant is a named accused yet he is liable to be enlarged on bail. Referring to the statements of prosecutrix as recorded under sections 161/164Cr.P.C. he contends that prosecutrix is willing and consenting party. The prosecutrix herself came to the applicant and thereafter accompanied him to Delhi. He therefore contends that since the applicant neither enticed away the prosecutrix nor abducted or kidnapped the prosecutrix as such, no offence under Sections 363, 366 I.P.C. can be said to have been committed by applicant. He further submits that the prosecutrix has also solemnized marriage with applicant, In view of above, no offence under Section 376 I.P.C and Sections 3/4 POCSO Act can be said to have been committed by applicant. In fact, the criminality alleged to have been committed by the applicant stands washed off. Even though the prosecutrix was below 18 years of age, on the date of her marriage with the applicant yet simply on that ground

the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11 (2) of the Hindu Marriage Act. However upto this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void.

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 12.09.2023. As such he has undergone more than two and a half 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 relied upon by the prosecution against applicant stands crystallised. Upto this stage, no such circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. The medical evidence does not support the charge-sheet. On the above premise, the learned counsel for applicant 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. has opposed the prayer for bail. He submits that since the applicant is a named accused, therefore he does not deserve any indulgence by this Court. Admittedly the prosecutrix was below 18 years of age on the date of occurrence as well as on the date of her marriage with applicant. Since the prosecutrix is minor, therefore her consent if any has no relevance. On the above premise, the learned A.G.A. submits that no sympathy be shown by this Court in favour of applicant. However he Could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at

this stage.

14. 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 as per the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C., the prosecutrix is a willing and consenting party, inasmuch as the prosecutrix was neither abducted, kidnapped or enticed away by the applicant for the purpose of marriage or to dislodge her modesty, as such prima facie no offence under Section 363, 366 I.P.C. is made out against applicant, since the prosecutrix has solemnized marriage with the applicant, in view of above, no offence under Section 376 I.P.C and Sections 3/ 4 POCSO Act can be said to have been committed by applicant, as no deliberate or forceful sexual assault was committed by the applicant upon the prosecutrix to dislodge her modesty, even though the prosecutrix was below 18 years of age, on the date of her marriage with the applicant but simply on that ground the marriage of the prosecutrix with the applicant shall not be void but voidable at the instance of the prosecutrix alone by virtue of the provisions contained in Section 11 (2) of the Hindu Marriage Act, however upto this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void, the police report (charge-sheet) in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, therefore, the entire evidence sought to be relied upon by the prosecution against applicant stands crystallised, yet in spite of above, the learned A.G.A. could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, the judgement of apex Court in **Sumit Subhashchandra Gangwal**

Vs. State of Maharashtra, 2023 LiveLaw (SC) 373 (Paragraph 5) the clean antecedents of applicant, the period of incarceration undergone, therefore, irrespective of the objections raised by learned A.G.A. in opposition to the present application for bail but without expressing any opinion on the merits of the case, applicant has made out a case for bail.

15. Accordingly, present application for bail is **allowed**.

16. Let the applicant-**Ajeet Ram** involved in aforesaid case crime number be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions which are being imposed in the interest of justice:-

(i) Applicant will not tamper with prosecution evidence.

(ii) Applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) Applicant will not indulge in any unlawful activities.

(iv) Applicant will not misuse the liberty of bail in any manner whatsoever.

17. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail of applicant and send him to prison

Order Date :- 30.11.2023

YK