

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 49480 of 2023

Applicant :- Akku Khan

Opposite Party :- State of U.P.

Counsel for Applicant :- Vijay Singh Sengar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Vijay Singh Sengar, 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-Akku Khan seeking his enlargement on bail in Case Crime No. 154 of 2023, under Sections 366, 368, 376, 506 IPC, Police Station-Kadaura, District-Jalaun during the pendency of trial i.e. Sessions Trial No. 268 of 2023 (State Vs. Appu Khan) now pending in the Court of Additional District & Sessions Judge/Special Judge (E.C. Act), Jalaun at Orai.

4. Record shows that in respect of an incident, which is alleged to have occurred on 06.07.2023, a delayed FIR dated 08.07.2023 was lodged by first informant-Mata Prasad Gupta (father of the prosecutrix) and was registered as Case Crime No. 154 of 2023, under Sections 366, 368, 376, 506 IPC, Police Station-Kadaura, District-Jalaun. In the aforesaid FIR, an unknown person has been arraigned as solitary accused.

5. The gravamen of the allegations made in the FIR is to the effect that the daughter of the first informant namely Shradha Gupta i.e. the prosecutrix who is a student of B.A.-IInd Second year has gone missing from the night of 5/6.07.2023.

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 prosecutrix was recovered on 10.07.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 31 of the paper book. The prosecutrix in her aforesaid statement has stated that she accompanied Akku Khan i.e. applicant herein on account of the threat extended by him. The

prosecutrix in her aforesaid statement has subsequently stated that thereafter her modesty was deliberately and forcibly dislodged by the applicant. Thereafter, the prosecutrix was requested for her internal medical examination. The prosecutrix in her statement before the Doctor, who medically examined her, has departed from her previous statement under Section 161 Cr.P.C. and has now stated that physical relations were developed between the parties upon the consent of the prosecutrix herself. 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 follows:-

"Hymen - Torn at various places old tag project."

7. Certain samples were collected from the body of prosecutrix for pathological examination. However, the same has not been brought on record. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 54 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C.

8. During course of investigation, Investigating Officer examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have also supported the FIR. 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 20.07.2023 whereby applicant has been charge sheeted under Sections 366, 368, 376, 506 IPC.

9. Learned counsel for applicant contends that though the applicant is a charge sheeted accused yet he is liable to be enlarged on bail. The prosecutrix is major. She is a willing and consenting party. The prosecutrix in her statement before the Doctor, who medically examined her, has clearly stated that physical relations between the parties were established upon the consent of prosecutrix. The medical evidence clearly shows that no deliberate or forceful sexual assault was committed upon the prosecutrix. He, therefore, contends that applicant is liable to be enlarged on bail.

10. 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 13.07.2023. As such, he has undergone more than 4 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 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.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The prosecutrix in her statements under Sections 161/164 Cr.P.C. has remained clear, categorical and consistent. As per the scheme of the Code (i.e. Cr.P.C.), the statement of the prosecutrix under Section 164 Cr.P.C. has to be given credence over and above the statement under Section 161 Cr.P.C. The prosecutrix in her said statement has fully supported the FIR. Up to this stage, there is nothing on record to show that the relationship between the parties is consensual in nature. As such, the charge sheet submitted against applicant is prima-facie substantiated by the statement of the prosecutrix referred to above. On the above conspectus, the learned A.G.A. contends that no sympathy be shown by this Court in favour of applicant.

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

13. 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.

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

15. It is accordingly **rejected**.

Order Date :- 6.12.2023/Vinay