

**Court No. - 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 49754 of 2023

**Applicant :-** Ankit

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

**Counsel for Applicant :-** Narayan Singh(Kushwaha)

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

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

1. Heard Mr. Narayan Singh Kushwaha, the learned counsel for applicant, the learned A.G.A. for State and Mr. Rajeev Kumar Singh, the learned counsel representing first informant-opposite party 2, who has put in appearance by filing his Vakalatnama in Court today, which is taken on record.

2. Perused the record.

3. This application for bail has been filed by applicant-Ankit, seeking his enlargement on bail in Case Crime No. 95 of 2023, under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act, Police Station-Patiyali, District-Kasganj during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 25.03.2023, a delayed FIR dated 26.03.2023 was lodged by first informant-Awadhesh (father of the prosecutrix) and was registered as Case Crime No. 95 of 2023, under Sections 363, 366 IPC, Police Station-Patiyali, District-Kasganj. In the aforesaid FIR, 2 persons namely Ankit and Vinay have been nominated as named accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused Ankit and Vinay enticed away the minor daughter of first informant i.e. the prosecutrix whose date of birth is 15.08.2006.

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 13.04.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on

record at page 25 of the paper book. The prosecutrix in her aforesaid statement has not supported the FIR. To the contrary, she has stated that she herself joined the applicant readily and willingly and accompanied the applicant-Ankit to various other places. In her aforesaid statement, the prosecutrix has also stated that she has solemnized court marriage with the applicant and on account of above, the parties came into cohabitation and started living as husband and wife. Subsequent to above, the prosecutrix was requested for her internal medical examination. However, the same was refused by her. As per the medical determination of age, the prosecutrix is said to be aged about 17 years. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 38 of the paper book. The prosecutrix in her aforesaid statement has rejoined her previous statement under Section 161 Cr.P.C.

7. During course of investigation, Investigating Officer examined the principal of the institution where the prosecutrix had studied. The principal of the institution, accordingly, issued a certificate dated 10.04.2023 wherein the date of birth of the prosecutrix is recorded as 15.08.2006. The said certificate further records that the prosecutrix had first attended the same institution. The occurrence giving rise to present criminal proceedings occurred on 25.03.2023. As such, the prosecutrix was aged about 16 years and 7 months. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have substantially 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 29.06.2023 whereby applicant has been charge sheeted under Sections 363, 366, 376 IPC and Sections 3/4 POCSO Act.

8. Learned counsel for applicant contends that though the applicant is a named and charge sheeted accused yet he is liable to be enlarged on bail. The prosecutrix in her statements under Sections 161 and 164 Cr.P.C. has not supported the FIR. The genesis of the statements of the prosecutrix referred to above is that the prosecutrix is a willing and consenting party. She has herself joined the applicant and accompanied him to various place. The prosecutrix had further stated that she has solemnized court marriage with the applicant and on account of above, the parties came into cohabitation and started living together as husband and wife. On the above premise, it is thus urged by the learned counsel

for applicant that no deliberate or forceful sexual assault was committed by the applicant upon the prosecutrix. As per the medical opinion, the prosecutrix is aged about 17 years. On the above conspectus, it is thus urged by the learned counsel for applicant that 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 01.07.2023. As such, he has undergone more than 5 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.

10. Per contra, the learned A.G.A. and the learned counsel representing first informant have vehemently opposed the prayer for bail. They submit that since admittedly the prosecutrix is below 18 years of age, therefore, her consent, if any, is wholly immaterial. As such, no sympathy be shown by this Court in favour of applicant.

11. When confronted with above, the learned counsel for applicant contends that 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 prosecutrix with 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, up to this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void. He, therefore, submits that applicant is entitled to bail.

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant, upon perusal of record, evidence, nature and gravity of offence, accusations made, complicity of accused and coupled with the fact that the prosecutrix in her statements under Sections 161/164 Cr.P.C. has not supported the FIR, as per the said statements, the prosecutrix is a willing and consenting party, the prosecutrix has herself joined the applicant out of her own sweet-will, as per the statements of the prosecutrix, she has solemnized marriage with

the applicant, consequently, on account of above, parties came into cohabitation and started living together as husband and wife, as such, no offence under Section 376 IPC and Sections 3/4 POCSO Act can be said to have been committed by the applicant as there was no deliberate or forceful sexual assault without the consent of the prosecutrix, though the prosecutrix was below 18 years of age on the date of her marriage with the applicant but simply on that ground 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, up to this stage, no proceedings have been initiated by the prosecutrix for declaration of her marriage with the applicant as void, the clean antecedents of applicant, the period of incarceration undergone, the police report 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, yet in spite of above, the learned A.G.A. and the learned counsel representing first informant could not point out any such circumstance from the record necessitating the custodial arrest of applicant during the pendency of trial, therefore, irrespective of the objections raised by the learned A.G.A. and the learned counsel representing first informant in opposition to the present application for bail, but without making any comments on the merits of the case, applicant has made out a case for bail.

13. Accordingly, the bail application is **allowed**.

14. Let the **applicant-Ankit**, be released on bail in the aforesaid case crime number 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)** THE APPLICANT SHALL FILE AN UNDERTAKING TO THE EFFECT THAT HE/SHE SHALL NOT SEEK ANY ADJOURNMENT ON THE DATE FIXED FOR EVIDENCE WHEN THE WITNESSES ARE PRESENT IN COURT. IN CASE OF DEFAULT OF THIS CONDITION, IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT IT AS ABUSE OF LIBERTY OF BAIL AND PASS ORDERS IN ACCORDANCE WITH LAW.

**(ii)** THE APPLICANT SHALL REMAIN PRESENT BEFORE THE TRIAL COURT ON EACH DATE FIXED, EITHER PERSONALLY OR THROUGH HIS/HER COUNSEL. IN CASE OF HIS/HER ABSENCE, WITHOUT SUFFICIENT CAUSE, THE TRIAL COURT MAY PROCEED AGAINST HIM/HER UNDER SECTION 229-A IPC.

(iii) IN CASE, THE APPLICANT MISUSES THE LIBERTY OF BAIL DURING TRIAL AND IN ORDER TO SECURE HIS/HER PRESENCE PROCLAMATION UNDER SECTION 82 CR.P.C., MAY BE ISSUED AND IF APPLICANT FAILS TO APPEAR BEFORE THE COURT ON THE DATE FIXED IN SUCH PROCLAMATION, THEN, THE TRIAL COURT SHALL INITIATE PROCEEDINGS AGAINST HIM/HER, IN ACCORDANCE WITH LAW, UNDER SECTION 174-A IPC.

(iv) THE APPLICANT SHALL REMAIN PRESENT, IN PERSON, BEFORE THE TRIAL COURT ON DATES FIXED FOR (1) OPENING OF THE CASE, (2) FRAMING OF CHARGE AND (3) RECORDING OF STATEMENT UNDER SECTION 313 CR.P.C. IF IN THE OPINION OF THE TRIAL COURT ABSENCE OF THE APPLICANT IS DELIBERATE OR WITHOUT SUFFICIENT CAUSE, THEN IT SHALL BE OPEN FOR THE TRIAL COURT TO TREAT SUCH DEFAULT AS ABUSE OF LIBERTY OF BAIL AND PROCEED AGAINST THE HIM/HER IN ACCORDANCE WITH LAW.

(v) THE TRIAL COURT MAY MAKE ALL POSSIBLE EFFORTS/ENDEAVOUR AND TRY TO CONCLUDE THE TRIAL WITHIN A PERIOD OF ONE YEAR AFTER THE RELEASE OF THE APPLICANT.

15. However, it is made clear that any wilful violation of above conditions by the applicant, shall have serious repercussion on his bail so granted by this Court and the trial court is at liberty to cancel the bail, after recording the reasons for doing so, in the given case of any of the condition mentioned above.

**Order Date :- 13.12.2023**

Vinay