

Court No. - 65

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 51926 of 2023

Applicant :- Sheru @ Rakesh

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

Counsel for Applicant :- Dinesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Dinesh Kumar Singh, 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-Sheru @ Rakesh seeking his enlargement on bail in Case Crime No. 236 of 2023, under Sections 363, 366, 376(3) IPC and Sections 3/4(2) POCSO Act, Police Station-Chakia, District-Chandauli 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 4 on 02.12.2023. However, in spite of service of notice, no one has put in appearance on behalf of first informant-opposite party 4 to oppose this application for bail.

5. Record shows that in respect of an incident, which is alleged to have occurred on 17.08.2023, a delayed FIR dated 18.08.2023 was lodged by first informant-Rambachan (father of the prosecutrix) and was registered as Case Crime No. 236 of 2023, under Section 363 IPC, Police Station-Chakia, District-Chandauli. In the aforesaid FIR, 3 persons namely (1) Sheru (applicant herein), (2) Nakhdu and (3) Manni Devi have been nominated as named accused.

6. The gravamen of the allegations made in the FIR is to the effect that named accused Sheru with the connivance of other 2 named accused i.e. parents of Sheru enticed away the minor daughter of the first informant i.e. the prosecutrix namely X.

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 prosecutrix was recovered on 19.08.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 31 of the paper book. The prosecutrix in her aforesaid statement has not supported the FIR. To the contrary, she has stated that she was in acquaintance with the applicant for the last 3 years. She herself joined the applicant and thereafter, accompanied him to different places. She further states that she has solemnized court marriage with the applicant. Subsequent to above, the prosecutrix was requested for her internal medical examination. However, the mother of the prosecutrix refused for her internal medical examination. As such, only external medical examination was conducted. However, the Doctor, who medically examined the prosecutrix, did not find any such signs on her body so as to denote commission of deliberate or forceful sexual assault. Subsequently, the ultrasound of the prosecutrix was conducted, copy of which is on record at page 49 of the paper book. As per the USG report, the prosecutrix was found to be in family way. The age of the fetus was reported to be 27 weeks and 6 days old. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein the prosecutrix has departed from her previous statement under Section 161 Cr.P.C. and has now implicated the present applicant in the crime in question.

8. During course of investigation, Investigating Officer recorded the statement of the Principal of institution where the prosecutrix was studying in Class-10. As per the said statement of the Principal, the date of birth of the prosecutrix recorded in the school record is 01.01.2008. The FIR giving rise to present criminal proceedings was lodged on 17.08.2023. As such, the prosecutrix was aged about 15 years, 7 months and 16 days on the date of lodging of the FIR. Investigating Officer further examined the first informant and other witnesses under Section 161 Cr.P.C. Witnesses so examined have 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 alone is established in the crime in question. He, accordingly, submitted the charge sheet dated 15.09.2023 whereby applicant has been charge sheeted under Sections 363, 366, 376(3) IPC and Sections 3/4(2) POCSO Act whereas the other named accused have been exculpated.

9. Learned counsel for applicant contends that though the applicant is a named as well as charge sheeted accused yet he is liable to be

enlarged on bail. Referring to the statement of the prosecutrix recorded under Section 161 Cr.P.C., he submits that the prosecutrix is a willing and consenting party. As per the aforementioned statement of the prosecutrix itself, it is evident that applicant has neither abducted, kidnapped or enticed away the prosecutrix for the purpose of marriage or dislodging her modesty deliberately or forcibly. As such, no offence under Section 363, 366 IPC can be said to have been committed by the applicant. The prosecutrix in her aforesaid statement has further stated that she has solemnized marriage with the applicant. In view of above, the parties came into marital relationship as husband and wife. Consequently, no offence under Section 376(3) and Sections 3/4 POCSO Act can be said to have been committed by the applicant either. The departure made by the prosecutrix in her subsequent statement under Section 164 Cr.P.C. has not been explained up to this stage. She has not even contradicted her previous statement under Section 161 Cr.P.C., therefore, the statements of the prosecutrix when taken together do not fall in the category of impeccable evidence. As such, no prosecution of the applicant can be maintained on the basis of above. 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 19.08.2023. As such, he has undergone more than 3 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 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.

11. Per contra, the learned A.G.A. has opposed the prayer for bail. He submits that since admittedly the prosecutrix was below 16 years of age on the date of lodging of FIR, therefore, her consent, if any, is wholly immaterial. Referring to the judgment of Supreme Court in **X (Minor) Vs. The State of Jharkhand and Another 2022 LiveLaw (SC) 194** and the fact as noted above, the learned A.G.A. contends that applicant does not deserve any indulgence by this Court. Admittedly, the prosecutrix has come in family way, which fact is clearly established from the USG report of the

prosecutrix. However, there is nothing on record to show that consent of the parents is in existence qua the marriage of the prosecutrix with the applicant. On the above premise, 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 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, 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, the present application for bail fails and is liable to be rejected.

15. It is accordingly **rejected**.

Order Date :- 5.12.2023

Vinay