

Court No. - 80

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10424 of 2025

Applicant :- Vinod Maurya

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

Counsel for Applicant :- Shivam Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anurag Kumar Pandey, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. This third application for bail has been filed by applicant-**Vinod Maurya**, seeking his enlargement on bail in Case Crime No. 235 of 2023, under sections 363, 376(2) N, 376(3) IPC, Section 4(2), 5L/6 POCSO Act, Police Station- Cantt. District- Bareilly during the pendency of trial i.e. Special Trial No. 325 of 2023 (State Vs.Vinod Maurya) now pending in the Court of Special Judge-POCSO Act/Additional Sessions Judge, Bareilly.

4. The first bail application of applicant was rejected by this Court vide order dated 11.12.2023 passed in Criminal Misc. Bail Application No. 44588 of 2023 (Vinod Maurya).

5. Subsequent to above order dated 11.12.2023 applicant filed his repeat application for bail which was registered as Criminal Misc. Bail Application No. 33157 of 2024 (Vinod Maurya Vs. State of U.P. and 3 others). Aforementioned repeat application for bail filed by applicant also came to be rejected by this Court vide order dated 06.01.2025. For ready reference, the order dated 06.01.2025 is reproduced hereinunder:-

"Heard Mr. Shivam Singh, the learned counsel for applicant, the learned A.G.A. for State.

Perused the record.

This repeat application for bail has been filed by applicant Vinod Maurya, seeking his enlargement on bail in Case Crime No. 235 of 2023, under sections 363, 376(2) N, 376(3) IPC, Section 4(2), 5L/6 POCSO Act, Police

Station- Cantt. District- Bareilly during the pendency of trial i.e. Sessions Trial No. 235 of 2023, under sections 363, 376(2) N, 376(3) IPC, Section 4(2), 5L/6 POCSO Act, Police Station- Cantt. District- Bareilly.

At the very outset, the learned A.G.A. submits that notice of this repeat application has been served upon first informant/opposite party-2 on 28.8.2024. However, inspite of service of notice, neither any counter affidavit has been filed by first informant/opposite party-2 nor anyone on his behalf has put in appearance to oppose this application.

The first bail application of applicant was rejected by this Court by a detailed order dated 11.12.2023 passed in Criminal Misc. Bail Application No. 44588 of 2023 (Vinod Maurya Vs. State of U.P. and 3 Others). For ready reference, the order dated 11.12.2023 is reproduced herein under:

"1. Heard Mr. Awadhesh Kumar Srivastava, the learned counsel for applicant, the learned A.G.A. for State and Mr. Ehtesham Afsar Khan, the learned counsel representing first informant-opposite party 2.

2. Perused the record.

3. This application for bail has been filed by applicant-Vinod Maurya seeking his enlargement on bail in Case Crime No. 235 of 2023, under Sections 363, 376(2)(N), 376(3) IPC and Sections 4(2), 5L/6 POCSO Act, Police Station-Cant, District-Bareilly during the pendency of trial.

4. Present application for bail came up for orders on 31.10.2023 and this Court passed the following order:-

"1. C.J.M., Bareilly is directed to get ossification test of the victim conducted through C.M.O., Bareilly within period of two weeks and send the duly certified photostat copy of the same to this court.

2. Put up this case as a fresh case on 28.11.2023 before appropriate Bench."

5.Pursuant to above order dated 31.10.2023, the ossification test of the prosecutrix was conducted. As per the medical opinion, the prosecutrix is said to be aged about 16 years. The original report has been sent to this Court in a sealed envelope, which is taken on record.

6. Record shows that in respect of an incident, which is alleged to have occurred on 30.06.2023, a prompt FIR dated 30.06.2023 was lodged by first informant-Banne Ali and was registered as Case Crime No. 235 of 2023, under Section 363 IPC, Police Station-Cant, District-Bareilly. In the aforesaid FIR, an unknown person have been arraigned as solitary accused.

7. The gravamen of the allegations made in the FIR is to the effect that daughter of the first informant namely X whose date of birth is 26.01.2008 has gone missing since 04:00 A.M. on 30.06.2023.

8. 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 01.07.2023. Thereafter, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. Same is on record at page 20 of the paper book. The prosecutrix in her aforesaid statement has clearly implicated the applicant in the crime in question by alleging that she was harassed by the applicant on phone. Subsequently, the prosecutrix was taken by the applicant to Ambedkarnagar where her modesty was dislodged. Thereafter, 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 person so as to denote commission of deliberate or forceful sexual assault. With regard to the private part of the prosecutrix, the Doctor has opined as follows:-

Hymen - Fresh Tear"

9. Thereafter, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., which is on record at page 43 of the paper book. The prosecutrix in her aforesaid statement has reiterated her previous statement under Section 161 Cr.P.C.

10. During course of investigation, Investigating Officer recovered the Transfer Certificate of the prosecutrix pertaining to Class-9 wherein the date of birth of the prosecutrix is mentioned as 26.01.2008. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 30.06.2023. As such, the prosecutrix was aged about 15 years, 5 months and 4 days on the date of occurrence. 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 26.08.2023 whereby applicant has been charge sheeted under Sections 363, 376(2)(N), 376(3) IPC and Sections 4(2), 5L/6 POCSO Act.

11. As per the ossification test, the age of the prosecutrix has been determined to be about 16 years.

12. Learned counsel for applicant contends that though the applicant is not named but charge sheeted accused yet he is liable to be enlarged on bail. The prosecutrix is a willing and consenting party inasmuch as, the prosecutrix has joined the applicant and accompanied him without shouting any statement. Furthermore, the medical evidence does not show commission of any deliberate or forceful sexual assault upon the prosecutrix. He, therefore, contends that applicant is liable to be enlarged on bail.

13. 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 on record necessitating the custodial arrest of the 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.

14. 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 applicant is a charge sheeted accused, therefore, he does not deserve any indulgence by this Court. It is then contended that applicant is aged about 33 years whereas the prosecutrix is a young girl aged less than 16 years. Attention of the Court was then invited to the Medico Legal Examination Report of the prosecutrix and on basis thereof, it is urged that in view of the opinion expressed by the Doctor regarding the private part of the prosecutrix, the medical opinion clearly support the charge sheet. The prosecutrix in her statements under Sections 161/164 Cr.P.C. has clearly implicated the applicant for the crime in question. Referring to the judgment of Supreme Court in X (Minor) Vs. The State of Jharkhand and Another 2022 LiveLaw (SC) 194, it is urged that since the prosecutrix was below 16 years of age whose modesty has been dislodged, therefore, even if the prosecutrix is a consenting party, no benefit can be deserved by the applicant from the same. It is thus urged that no sympathy be shown by this Court in favour of applicant. As such, the bail application is liable to be rejected.

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

16. 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, complicity of accused, accusations made coupled with the fact that since the objections raised by the learned A.G.A. and the learned counsel representing first informant 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.

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

18. It is accordingly rejected.

19. The original documents pertaining to the medical determination of age of the prosecutrix which have been sent to this Court shall be sent to the court below by the Registry in a sealed envelope within one week from today. "

Learned counsel for applicant submits that subsequent to order dated 11.12.2023, the statement of the prosecutrix has been recorded before Court

below. However, the prosecutrix in her deposition before Court below has not supported the F.I.R. He, therefore contends that once the prosecutrix has not supported the F.I.R. in her deposition before Court below, coupled with the fact that statements of the prosecutrix have already been recorded, therefore, in case the applicant is enlarged on bail then in that eventuality it cannot be said that he shall either terrorize the witnesses or shall hamper the course of trial. Furthermore no good ground exists to prolong the custodial arrest of applicant during the pendency of trial as the stated of the prosecutrix itself stand recorded.

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 1.7.2023. As such, he has undergone more than one year and five months of incarceration. The police report in terms of Section 173 (2) Cr.P.C. has already been submitted against applicant, as such, the entire evidence sought to be relied upon by prosecution against applicants stands crystalized. However, upto this stage no such incriminating circumstance has emerged necessitating the custodial arrest of applicant during the pendency of trial. It is thus urged 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.

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. Learned A.G.A. has then invited attention of the Court to the deposition of the prosecutrix recorded before Court below which has been brought on record by means of supplementary affidavit filed by the learned counsel for applicant in Court today. Prosecutrix in her deposition before Court below has clearly and categorically stated that criminality was committed by applicant upon her against her wishers. In view of categorical statement in the statement-in-chief of the prosecutrix, coupled with the fact that inspite of the fact that prosecutrix was cross-examined by the defence, and the defence failed to cull out any such statement from her statement, on the basis of which, her statement can be said to be unworthy of reliance, now new good or sufficient ground has emerged so as to enlarge the applicant on bail.

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

Having heard the learned counsel for applicant, the learned A.G.A. for State, upon perusal of material brought on record, evidence, nature and gravity of offence as well as complicity of applicant, accusation made coupled with the fact that objections raised by the learned A.G.A. in opposition to the present application bail could not be dislodged by learned counsel for applicant, therefore irrespective of the varied submissions urged by learned counsel for applicant in support of the present repeat application for bail, but without making any comment on the merits of the case, this Court does not find any good ground to enlarge the applicant on bail.

In view of above, the application fails and is liable to be rejected.

It is accordingly rejected. "

6. Now applicant has approached this Court by means of this third bail application for bail.

6. Learned counsel for applicant submit that though applicant is a named and charge sheeted accused, however, in view of subsequent development as have emerged on record of concerned Sessions Trial, the applicant is liable to be enlarged on bail during the pendency of trial.

7. According to the learned counsel for applicant trial of applicant has already commenced before Court below. In the charge sheet/police report submitted by Investigating Officer in terms of Section 173(2) Cr.P.C. as many as 9 prosecution witnesses have been nominated therein. Upto this stage, only 5 prosecution witnesses have deposed before Court below. Trial of the applicant is of the year 2023. In spite of fact that a period of almost 2 years as expired trial of the applicant has not yet concluded. In the facts and circumstances of the case, it is contended by the learned counsel for applicant that it cannot be said that trial shall be completed in near future.

8. It is then contended by the learned counsel for applicant that prosecutrix has deposed before Court below as PW-1, whereas first informant has deposed before Court below as PW-2. He has then taken the Court to the statement of aforementioned witnesses and with reference to the same, he submits that since the statement of the prosecutrix suffers from the voices of PW-1 and PW-2 are contradictory in nature. Therefore, on the basis of same it cannot be conclusively concluded that applicant is guilty of committing the crime in question. On the above premise, the learned counsel for applicant submits that since prosecution itself has not able to establish its case before Court below beyond all reasonable doubt. Therefore, the present 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 two years of incarceration. The charge sheet/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 incriminating circumstance has emerged on record necessitating the custodial arrest of the applicant during the pendency of trial. Apart from above, since the statement of first informant opposite party-2 as PW-2 and the prosecutrix PW-1 has already been recorded before Court below,

therefore, in case, the applicant is enlarged on bail then in that eventuality it cannot be said that the applicant shall either terrorize the witnesses or shall hamper the course of trial. On the above premise, the learned counsel for applicant submits that in view of aforementioned fact that no justifiable ground can now be said in existence to prolong the custodial arrest of applicant. It is thus urged by the learned counsel for applicant that applicant is liable to be enlarged on bail during the pendency of trial. In case, the applicant-appellant is enlarged on bail then in that eventuality, he shall not misuse the liberty of bail and shall co-operate with the trial.

10. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently 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. Considering the nature and gravity of the offence complained of against applicant, the period of incarceration undergone by applicant by itself cannot be said so sufficient so as to enlarge the applicant on bail. It is then contended by the learned A.G.A. that even though this Court is a superior Court even though dictates of jurisprudence is require to this Court evaluate the evidence which is emerged on record of the trial pending before Court below as any of the observations made by this Court shall amount pre-empting trial causing prejudice either to the prosecution or the defence. In view of above, the learned A.G.A. submits that since prosecutrix as PW-1 have not been declared hostile. Therefore, prima facie, it cannot be said that PW-1 Prosecutrix and first inforamnt PW-2 have not supported the prosecution story as unfolded in the FIR. Since, applicant is under trial for offence under Sections Section 4(2), 5L/6 POCSO Act, therefore, by reason of the provisions contained in Section 29 of the POCSO Act burden upon applicant himself to establish the prosecutrix is within the meaning of the terms child as defined in the POCSO Act. On the above premise, the learned A.G.A. thus submits that since no new good or sufficient ground has emerged so as to enlarge the applicant on bail. As such, this third application for bail is liable to be rejected.

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

12. Having heard, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, and upon perusal of record, evidence, nature and gravity of offence, complicity of accused, accusation made and this Court finds that the objections raised by the learned A.G.A. in opposition to the this third 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 this third application for bail, but without making any comments on the merits of the case, this Court does not find any new good or sufficient ground so as to enlarge the applicant on bail.

13. As a result, this third application for bail fails and is liable to be rejected.

14. It is, accordingly **rejected**.

Order Date :- 8.7.2025

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