

Court No. - 71

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 42060 of 2024

Applicant :- Vinay Singh Alias Vinay Thakur

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

Counsel for Applicant :- Shikher Trivedi, Vimlendu Tripathi

Counsel for Opposite Party :- G.A., Pooja Mishra, Sanjay Srivastava

Hon'ble Rajeev Misra, J.

1. Heard Mr. Vimlendu Tripathi Advocate alongwith Mr. Shikher Trivedi, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1, Mr. Sanjay Srivastava, the learned counsel representing first informant / opposite party-2 and Ms. Pooja Mishra, the learned counsel representing opposite party-4, High Court, Legal Services Committee, High Court, Allahabad.

2. Perused the record.

3. This repeat application for bail has been filed by applicant-Vinay Singh Alias Vinay Thakur seeking his enlargement on bail in Case Crime No. 62 of 2023 under Sections 328, 376, 323, 324, 384, 504, 506, 406, 354, 120-B I.P.C. and Sections 5(L)6 POCSO Act, Police Station-Barra, District-Kanpur Nagar during the pendency of trial i.e. Special Sessions Trial No.614 of 2023 (State Vs. Vinay Singh and others) under Sections 328, 376, 323, 324, 354, 504, 506, 406, 120-B I.P.C. and Sections 3/4, 5(L)6, 17 POCSO Act, Police Station-Barra, District-Kanpur Naga now pending in the Court of Special Judge, POCSO Act/Additional Sessions Judge, Court No.13, Kanpur Nagar.

4. The first bail application of applicant was rejected by this Court

by a detailed order dated 30.10.2023 passed in Criminal Misc. Bail Application No. 40996 of 2023 (Vinay Singh Alias Vinay Thakur Vs. State of U.P. and 3 others). For ready reference, the said order is reproduced herein under:

"1. Heard Mr. Mohd. Samiuzzaman Khan, the learned counsel for applicant, the learned A.G.A. for State, Mr. Sanjay Srivastava, the learned counsel representing first informant-opposite party 2 and Mrs. Abhilasha Singh, the learned counsel representing opposite party 4-High Court Legal Services Committee, High Court, Allahabad.

2. Perused the record.

3. This application for bail has been filed by applicant-Vinay Singh @ Vinay Thakur seeking his enlargement on bail in Case Crime No. 62 of 2023, under Sections 328, 376, 323, 324, 384, 504, 506, 406, 354, 120-B IPC and Sections 5(1)/6 POCSO Act, Police Station-Barra, District-Kanpur Nagar during the pendency of trial.

4. Record shows that in respect of an incident, which is alleged to have occurred on 03.03.2023, a delayed FIR dated 04.03.2023 was lodged by first informant-Dr. Avnish Dwivedi (father of the prosecutrix) and was registered as Case Crime No. 62 of 2023, under Sections 147, 328, 376, 323, 324, 506 IPC and Sections 3/4 POCSO Act, Police Station-Barra, District-Kanpur Nagar. In the aforesaid FIR, 3 persons namely - (1) Vinay Thakur (applicant herein), (2) Ajay and (3) Aman Sengar have been nominated as named accused whereas 4-5 unknown persons have also been arraigned as accused.

5. The gravamen of the allegations made in the FIR is to the effect that named accused-Vinay Singh @ Vinay Thakur (applicant herein) deliberately dislodged the modesty of the prosecutrix. The other named accused and unknown persons are also alleged to have attempted to dislodge the modesty of the prosecutrix.

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 statement of the prosecutrix was recorded under Section 161 Cr.P.C., which is on record at page 38 onwards. The prosecutrix in her aforesaid statement has not only supported the FIR but has also detailed the entire manner of occurrence. 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. The Doctor, who medically examined the prosecutrix, found certain injuries on her person so as to denote commission of deliberate and forceful sexual assault. The same is evident from the recital contained at pages 70 and 71 of the paper book, which reads as under:-

"1. Bite mark on neck on left side 8 teeth mark and reddish brown scabbing circular mark of 2.5 x 2.5 cm 5 teeth mark.

2. A mucosal injury on inner lower lip right side due to punching inside about 1 x 1 cm reddish molour.

3. A induration swelling of about 4 x 3 cm present in scalp region, reddish in color, right side.

4. Bite mark (abraisional wound) 2 x 1 cm on right cheek about 2 cm from the angle of mouth reddish, brown scab.

5. An abrasion of 2 x 2 cm on left knee and the clothing (geans) above it was torn reddish brownish scab on it.

6. Hairs Pull (Those hair are also sealed).

7. Reddening of oral mucosa below the tongue on right side."

7. With regard to the private parts of the prosecutrix, the Doctor has opined as follows:-

"Hymen - Ruptured fresh redness present."

8. Certain samples were taken from the body of the prosecutrix for pathological examination. The clothes of the prosecutrix and the applicant, which were worn by them at the time of occurrence were also recovered. After the vengine test was conducted, blood was found on the same. Male spermatozoa was also found on the clothes of the prosecutrix.

9. Ultimately, the statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein the prosecutrix has reiterated her earlier statement under Section 161 Cr.P.C. During course of investigation, Investigating Officer recovered the High School mark sheet of the prosecutrix wherein her date of birth has been recorded as 16.04.2006. The occurrence giving rise to present criminal proceedings is alleged to have occurred on 03.03.2023. As such, the prosecutrix was aged about 16 years and 10 months on the date of occurrence. Investigating Officer further examined 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 and Ajay Thakur @ Ajay Singh, Aman Sengar and Sobhit Pal is established in the crime in question, who have been charge sheeted under the following Sections:-

(i). Applicant-Vinay Singh @ Vinay Thakur has been charge sheeted under Sections 328, 376, 323, 324, 506, 406, 384, 504 IPC and Sections 51/6 POCSO Act, Police Station-Barra, District-Kanpur Nagar.

(ii). Accused-Ajay Thakur @ Ajay Singh has been charge sheeted under Sections 328, 376, 323, 324, 506, 406, 120-B, 354 IPC and Sections 3/4/17 POCSO Act, Police Station-Barra, District-Kanpur Nagar.

(iii). Accused-Sobhit Pal has been charge sheeted under Sections 4/17

(iv). Accused-Ajay Thakur @ Ajay Singh has been charge sheeted under Sections 328, 376, 323, 324, 506, 406, 120-B, 354 IPC and Sections 3/4/17 POCSO Act, Police Station-Barra, District-Kanpur Nagar.

10. Learned counsel for applicant submits that though applicant is a named as well as charge sheeted accused yet he is liable to be enlarged on bail. With reference to the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C., he submits that the prosecutrix is a willing and consenting party. In view of above, no offence as alleged can be said to have been committed by the applicant. He, therefore, submits that applicant is liable to be enlarged on bail.

11. Though applicant has criminal history of certain cases pending against him, the same has been duly explained in paragraph 32 of the affidavit filed in support of the present application for bail. Applicant is in jail since 06.03.2023. As such, he has undergone more than 7 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.

12. Per contra, the learned A.G.A. for State, Mr. Sanjay Srivastava, the learned counsel representing first informant-opposite party 2 and Mrs. Abhilasha Singh, the learned counsel representing opposite party 4 have vehemently opposed the prayer for bail. They submit that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence by this Court. The prosecutrix is a young girl aged about 16 years and 10 months whose modesty has been deliberately dislodged. The ocular version of the occurrence as explained in the statements of the prosecutrix recorded under Sections 161/164 Cr.P.C. clearly supports the FIR. The prosecutrix in her aforesaid statement has remained clear, categorical and consistent not only with regard to the occurrence but also the manner of the occurrence. The medical evidence also supports the ocular version of the occurrence. As such, there is nothing on record to infer the innocence of the applicant. Since the prosecutrix is below 18 years of age, therefore, her consent, if any, is wholly immaterial. On the above conspectus, it is thus urged that no sympathy be shown by this Court in favour of applicant.

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

14. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant-opposite party 2, Mrs. Abhilasha Singh, the learned counsel representing opposite party 4, upon perusal of record, evidence, complicity of accused, accusations made coupled with the fact that the prosecutrix in her statements under Sections

161/164 Cr.P.C. has clearly supported the FIR, the prosecutrix in her above noted statements has remained clear, categorical and consistent, the ocular version of the occurrence is clearly supported by the medical evidence on record, the prosecutrix being a child within the meaning of the POCSO Act, as she was below 18 years of age on the date of occurrence (16 years and 10 months), therefore, her alleged consent, if any, is wholly immaterial, 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.

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

16. It is accordingly rejected.

Order Date :- 30.10.2023 "

5. Mr. Vimlendu Tripathi, the learned counsel for applicant contends that though the applicant is a named and charge sheeted accused, however, in view of the subsequent developments that have emerged on record, the applicant is liable to be enlarged on bail. In furtherance of aforesaid submission, the learned counsel for applicant submits that all the prosecution witnesses of fact have already deposed before court below. The Doctor, who medically examined the prosecutrix and the Investigating Officer, who initially conducted the investigation of concerned case crime number, have also deposed before court below. Now only one prosecution witness remains to be examined by the Court i.e. Investigating Officer, who conducted the penultimate part of investigation. On the above conspectus, the learned counsel for applicant submits that once the statements of the first informant and the prosecutrix have been recorded before court below therefore if the applicant is enlarged on bail then in that eventuality it cannot be said that if the applicant is enlarged on bail, he shall either terrorize the witnesses or shall hamper the course of trial. Almost entire prosecution evidence stands recorded however upto this stage no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the

pendency of trial. He therefore submits that applicant is liable to be enlarged on bail. It was then contended by Mr. Vimlendu Tripathi, the learned counsel for applicant that applicant is further liable to be enlarged on bail so that he gets an opportunity to prepare his defence in consultation with his counsel. To buttress his submission, he has relied upon the following judgments of this Court and the Supreme Court:-

- i. Criminal Misc. Bail Application No. 35243 of 2024 (Prashant Gautam Vs. State of U.P.) decided on 01.10.2024**
- ii. Criminal Misc. Bail Application No. 2586 of 2023 (Prabhat Gangwar Vs. State of U.P.) decided on 19.09.2023**
- iii. Criminal Misc. Bail Application No. 1636 of 2019 (Ranjeet Kumar (Forth Bail) Vs. State of U.P.) decided on 18.01.2021**
- iv. Special Leave to Appeal (Crl) No (s) 8523 of 2024 (Balwinder Singh Vs. State of Punjab and another) decided on 09.09.2024.**

6. Much emphasis was laid upon paragraph-7 of the order dated 09.09.2024 passed by Supreme Court in the case of (Balwinder Singh Vs. State of Punjab and another). For ready reference, paragraph-7 is reproduced herein below:

"7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution"

7. Even otherwise, applicant is a man of clean antecedents having no criminal history to his credit except the present one. Applicant is in custody since 6.03.2023. As such, he has undergone more than one year and nine months of incarceration. The police report

(charge-sheet) 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 crystallised. However, upto this stage, no such incriminating circumstance has emerged on record necessitating the custodial arrest of applicant during the pendency of trial. On the cumulative strength of above, 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.

8. Per contra, the learned A.G.A. for State-opposite party-1, Mr. Sanjay Srivastava, the learned counsel representing first informant / opposite party-2 and Ms. Pooja Mishra, the learned counsel representing opposite party-4, High Court, Legal Services Committee, High Court, Allahabad have vehemently opposed the prayer for bail. They submit that since applicant is a named and charge sheeted accused, therefore, he does not deserve any indulgence of this Court. Attention of Court was then invited to the recital contained in paragraphs 6 and 10 of the earlier order dated 30.10.2023. On the above premise, it is thus urged by the learned A.G.A. and the learned counsel representing first informant/opposite party-2 that no sympathy be shown by this Court in favour of applicant.

9. It is further submitted by the learned A.G.A. that there are three named and charge sheeted accused out of which two have already been enlarged on bail. Since other two named and charge sheeted accused have already been enlarged on bail, therefore plea raised by the learned counsel for applicant in support of this repeat application for bail is prima-facie misconceived. The defence of the applicant can be got prepared by the other co-accused in

consultation with the counsel. As such, present application is liable to be dismissed.

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

11. Having heard the learned counsel for applicant, the learned A.G.A. for State, Mr. Sanjay Srivastava, the learned counsel representing first informant / opposite party-2, Ms. Pooja Mishra, the learned counsel representing opposite party-4, High Court, Legal Services Committee, High Court, Allahabad and 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 objections raised by the learned A.G.A. and the learned counsel representing first informant/opposite party-2 in opposition to this repeat application for bail as noted herein above 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 present repeat application for bail but without expressing any opinion 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.

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

13. It is accordingly **rejected**.

Order Date :- 24.1.2025

YK