

Court No. - 69

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8081 of 2023

Applicant :- Malkhan Singh

Opposite Party :- State of U.P.

Counsel for Applicant :- Juned Alam, Mohd Hamid

Counsel for Opposite Party :- G.A., Ravesh Kumar Singh

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Juned Alam, learned counsel for the applicant, Sri Ravesh Kumar Singh, learned counsel for the first informant, Sri Ajay Singh, learned A.G.A-1 for the State and perused the material on record.
3. This bail application under Section 439 of Code of Criminal Procedure has been filed by the applicant-Malkhan Singh, seeking enlargement on bail during trial in connection with Case Crime No.143 of 2022, under Sections 366, 376, 504, 507 IPC, registered at Police Station Nidhauri Kalan, District Etah.
4. Vide order dated 27.2.2023 passed by coordinate Bench of this Court direction was issued for getting the ossification test of the victim conducted and the report be sent to this Court. As per office report dated 6.4.2023, the said report has been received in a sealed envelop which was tagged in the present file. On direction of this Court the sealed envelop has been opened. The Court has perused the said report dated 21.3.2023 of the C.M.O, Etah. Perusal of the same shows that the victim has been opined to be 16 to 17 years of age. The said report is directed to be made part of the record.
5. The FIR of the matter was lodged on 29.7.2022 by Brajesh Kumar against the applicant alleging therein that on 24.7.2022 at about 4 p.m. his daughter aged about 18 years has been lured and enticed away by the applicant. When he returned back from the fields, he found his daughter to be not at home after which she was searched but could not be traced out. The FIR be thus lodged.
6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that in the FIR itself the first informant has stated the age of the

victim as 18 years and as such she was a major. The victim in her statement under Section 161 Cr.P.C. stated that she went with the applicant out of her own sweet-will and stayed in a rented room where they established physical relationship. It is argued that subsequently the victim in her statement under Section 164 Cr.P.C. has stated that also going with the applicant out of her own sweet-will but states sexual assault on her. The same is a changing of version by her under pressure of police and her family members. The present case is a case of consent. It has also been pointed out that the applicant is not having any criminal history as stated in para 29 of the affidavit. The applicant is in jail since 29.10.2022.

6. Per contra learned counsel for the first informant and learned counsel for the State opposed the prayer for bail.

7. After hearing the counsel for the parties and perusing the record, it is evident that the victim as per FIR is a major girl. She states of going with the applicant on her own sweet-will in her statement under Section 161 Cr.P.C. There is variation in her statements under Section 161 Cr.P.C. and 164 Cr.P.C.

8. Looking to the facts and circumstances of this case, the nature of evidence and also the absence of any convincing material to indicate the possibility of tampering with the evidence, this Court is of the view that the applicant may be enlarged on bail.

9. Let the applicant-**Malkhan Singh**, be released on bail in the aforesaid case crime number on 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 will not tamper with prosecution evidence and will not harm or harass the victim/complainant in any manner whatsoever.

ii) The applicant will abide the orders of court, will attend the court on every date and will not delay the disposal of trial in any manner whatsoever.

(iii) The applicant shall file an undertaking to the effect that he 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.

(iv) The applicant will not misuse the liberty of bail in any manner whatsoever. In case, the applicant misuses the liberty of bail during trial and in order to secure his 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, in accordance with law, under section 174-A I.P.C.

(v) 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 him in accordance with law and the trial court may proceed against him under Section 229-A IPC.

(vi) The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously after the release of the applicant.

10. The identity, status and residential proof of sureties will be verified by court concerned and in case of breach of any of the conditions mentioned above, court concerned will be at liberty to cancel the bail and send the applicant to prison.

11. The bail application is allowed.

(Samit Gopal, J.)

Order Date :- 23.11.2023

Gaurav Kuls