

Court No. - 72

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 48511 of 2023

Applicant :- Ankur

Opposite Party :- State of U.P.

Counsel for Applicant :- Yogendra Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal,J.

1. List has been revised.
2. Supplementary affidavit filed today is taken on record.
3. Heard Sri Yogendra Pal Singh, learned counsel for the applicant, Sri Sunil Kumar, learned A.G.A. for the State and perused the material placed on record.
4. Applicant seeks bail in Session Trial No.05 of 2023 (State vs. Ankur) in Case Crime No.634 of 2022, under Sections 363 and 366 I.P.C., Police Station Kairana, District Shamli, during the pendency of trial.
5. As per prosecution story, the applicant is stated to have enticed away the minor daughter of the informant on 08.11.2022 at about 1:00 p.m.
6. Learned counsel for the applicant has argued that the applicant is absolutely innocent and has been falsely implicated in the present case with a view to cause unnecessary harassment and to victimize him. The FIR is delayed by seven days and there is no explanation of the said delay caused. The victim is a consenting party. To buttress his arguments, learned counsel has placed much reliance on the statement of the victim recorded under Section 164 Cr.P.C., whereby she has stated that she had gone with the applicant out of her own sweet will to Shamli bus stand, from where she had called the applicant and both had gone together to Meerut. Learned counsel has further stated that there are no allegations against the applicant of any sexual assault whatsoever.
7. Learned counsel for the applicant has further stated that as per

school certificate, the age of the victim is more than 17 years on the date of incident as her date of birth is 09.07.2006. By visible appearance, the victim looks major. Several other submissions have been made on behalf of the applicant to demonstrate the falsity of the allegations made against him. The circumstances which, as per counsel, led to the false implication of the applicant have also been touched upon at length. The applicant is languishing in jail since 18.08.2023. In case, the applicant is released on bail, he will not misuse the liberty of bail.

8. Learned counsel for the applicant has placed much reliance on the judgment of Apex Court in **Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673**, wherein it has been stated that it is more often in the Indian Society that person shows the age of their wards much below than their actual age. It is also settled by Apex Court that as per the medical records, a leverage of two years may be granted to the accused person. In the case of **Brij Mohan Singh vs. Priya Brat Narain Sinha, AIR 1965 SC 282**, this Court, inter alia, observed that in actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. It is also settled by Apex Court that as per the medical records, a leverage of two years may be granted to the accused person.

9. Learned A.G.A. has vehemently opposed the bail application.

10. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, taking into consideration the fact that there is delay in lodging of the FIR and the victim seems to be major, the evidence on record, and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

11. Let the applicant- **Ankur**, who is involved in aforementioned case crime be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with evidence.

(ii) 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.

12. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

13. It is made clear that observations made in granting bail to the applicant shall not in any way affect the learned trial Judge in forming his independent opinion based on the testimony of the witnesses.

Order Date :- 09.11.2023

Ravi Kant

(Krishan Pahal, J.)