

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 19 of 2023

Applicant :- Rizwan Ali

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Narendra Gupta, Gangeshwar Pandey, Mrs. Suniti Sachan, Rakesh Kumar Saini, Rudra Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the information earlier sent by the In charge Chief Judicial Magistrate, Unnao of date 25.01.2023, the opposite party no.2 (complainant) has been sufficiently/personally served. The State has also enclosed with its counter affidavit a notice served on the complainant/informant, however, despite sufficient service, he is not represented.

2. Heard Mrs. Suniti Sachan, learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

3. This bail application has been moved by the accused/applicant- **Rizwan Ali** for grant of bail, in Case Crime No. 198 of 2022, under Sections 363, 366, 376, 504, 506 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Safipur, District Unnao, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. The first information report of this case has been lodged by the father of the prosecutrix on 13.05.2022 alleging therein that his daughter aged about 14 years had gone in the night to ease herself and did not return thereafter and later on it was known that she has been enticed away by the instant applicant with the help of other accused persons and they are also pressurizing her to change her religion and also intimidating her. The prosecutrix is shown to have returned herself on 15.05.2022 and her statement under Section 161 Cr.P.C. was recorded, wherein she admitted to have accompanied the applicant on her own volition as she was having relationship with him for the last five years and they are also cohabiting and also solemnized marriage

about two years (from recording of the statement) in a temple and she was insisting her family members to solemnize marriage with the applicant, however, they have not paid any heed to the request of the prosecutrix. In her statement recorded under Section 164 Cr.P.C., the prosecutrix has stated the same story of solemnizing marriage with the applicant and also that on the relevant date and time she had accompanied him on her own volition and thereafter on getting knowledge that F.I.R has been lodged, they returned themselves.

5. Highlighting the above facts, it is vehemently submitted that the prosecutrix has not stated anything against the applicant and it appears that on account of the age of the prosecutrix, which according to the prosecution is less than the age of the majority, charge sheet has been filed. Elaborating further, it is submitted that in her statement recorded under Section 161 Cr.P.C., she has stated that she had got an education upto Class VIII standard at Sumitra Devi Vidya Mandir, Barhali, while the prosecution has collected the transfer certificate of the prosecutrix issued by Mehtab Public School Pawa, Safipur Unnao and it appears that the same has been procured.

6. While drawing the attention of this Court towards an extract of 'parivar register' filed through supplementary affidavit of date 01.12.2023, it is submitted that the age of the prosecutrix is shown in this document as 01.01.2003, by which she is coming about 19 years at the date and time of the incident. It is also highlighted that in-chief-examination of the prosecutrix has been recorded before the trial Court as P.W.-1, however, the same could not be completed in view of the absence of the statement of the prosecutrix earlier recorded under Section 164 Cr.P.C. However, whatever statement of the prosecutrix has been recorded, she has specifically stated that she is aged about 20-22 years, She was willing to marry the applicant, however, they belong to different religions and her family members were not ready for the same. She had herself accompanied the applicant and was living with him as husband and wife. She had got education from prosecutrix Mehtab Public School Pawa, Safipur Unnao.

7. It is next submitted that applicant is languishing in jail in this case since 18.05.2022 and he is not having any criminal history and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand submits that though, specific allegation has not been levelled against the applicant, however, the prosecutrix having regard to the tender age was

not in a position to give her consent and, therefore, her consent is immaterial for the purpose of adjudication as the marriage could also not be solemnized rendering the alleged marriage of the applicant with the prosecutrix as *void abinitio*.

9. Perusal of the record in the background of submissions made by learned counsel for the parties would reveal that the prosecutrix after being recovered in her statements recorded under Section 161 and 164 Cr.P.C. has not uttered anything against the applicant. She admitted to have accompanied him, solemnize marriage with him and also resided with him as his wife. Various submissions have been made in support and against the age of the prosecutrix. The prosecution has relied on the copy of transfer certificate issued by one Mehtab Public School Pawa, Safipur Unnao, wherein the date of birth of the prosecutrix is shown as 08.10.2008, while the applicant has relied on the copy of 'parivar register' filed through supplementary affidavit dated 01.12.2023 wherein the date of the prosecutrix is shown as 01.01.2003. Thus, there appears discrepancy so far as the age of the prosecutrix is concerned. Significantly, the prosecutrix in her statement recorded under section 161 and 164 Cr.P.C. has not stated her age. Thus, in the considered opinion of this Court, the age of the prosecutrix is still to be adjudicated by the trial Court after providing an opportunity to lead evidence to the parties. Apart from the tender age of the prosecutrix, there appears no evidence or material against him. Applicant is not having any criminal history and is detained in prison in this case since 18.05.2022.

10. Thus, having regard to all the facts and circumstances of the case, the applicant has made out a case for bail, *moreso*, when he is not having any criminal antecedents. The bail application is thus **allowed**.

11. Let the accused/applicant- **Rizwan Ali** involved in above-mentioned case, be released on bail on his furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

(iii) The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

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

13. Identity, status and residence proof of the applicant and sureties be verified by the Court concerned before the bonds are accepted.

14. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 5.12.2023

Praveen