

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 697 of 2023

Applicant :- Deepu

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

Counsel for Applicant :- Purusottam Awasthi,Ashish Kumar,Neeraj Singh,Sumit Srivastava

Counsel for Opposite Party :- G.A.,Hari Nam Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. The name of Shri Hari Nam Singh is printed in the cause list as learned counsel for opposite party no.2 (complainant/informant), however, he is not present nor any request has been made to adjourn the case on his behalf.

2. Heard Shri Neeraj Singh, 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- **Deepu** for grant of bail, in Case Crime No. 0358 of 2022, under Sections 376, 120-B, 504, 506 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, Police Station Bangarmau, 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 19.08.2022 with regard to the incident which had taken place on 18.08.2022 to the tune that on 18.08.2022 at about 6:00 pm. Anshika, cousin sister of the applicant had taken the daughter of the informant with her to her house and when her daughter entered into a room the applicant rabbed her and Anshika bolted the room from outside and applicant committed rape on his daughter and when his wife had gone to the house of Anshika to look after the victim, she found her daughter in a deteriorated condition and the applicant was also found in the room and it was informed by her daughter that she has been subjected to rape by the applicant. However, the applicant had fled away from the scene of crime. The statements of the prosecutrix were recorded under Section 161 and 164 Cr.P.C. wherein she had fortified the allegation of rape.

5. Highlighting the above facts, it is vehemently submitted that the story, as has been cooked up by the informant is patently false, absurd and could not be believed. Elaborating further, it is submitted that it has come in the first information report that after overpowering the prosecutrix she was subjected to rape for a very long time. However, after two days of the incident the prosecutrix was medically examined on 20.08.2022 and no injury either external or internal or any abnormality has been found on her person and so much so the hymen has also been found intact, which belies the whole prosecution story.

6. While drawing the attention of this Court towards a certificate/information provided by the In charge Warden of 'Kasturba Gandhi Awasiya Balika Vidyalaya' Unnao placed at Page No.26 and 27 of the paper book, it is submitted on behalf of the applicant that the story, as developed by the prosecution with regard to taking of the prosecutrix by Anshika (cousin sister of the applicant) to her house is absolutely concocted and could not be believed, as the warden of 'Kasturba Gandhi Awasiya Balika Vidyalaya' has issued a certificate with regard to the presence of Anshika in the hostel at the relevant point of time. Thus, the whole story of the prosecution is under the cloud of suspicion.

7. It is also submitted that the applicant and prosecutrix were having an affair, however, when she was found with the applicant she had taken the side of her family members and had given statements against him. It is next submitted that though, the prosecutrix at the relevant point of time was of very tender age but the same is not going to affect the case of the applicant adversely, as there is absolutely no evidence or material which may even prima facie reflects on commission of rape, as the hymen of the prosecutrix has been found intact and even a scratch has not been found on her body.

8. It is further submitted that applicant is languishing in jail in this case since 11.09.2022 and he is not having any criminal history. Charge sheet in this case has already been filed 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.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence with a girl of very tender age and, therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix

as per ossification test is 16 years while as per her educational credentials she has been stated in the F.I.R. as 15 years and 08 months and as per the date of birth given in the educational credentials she is coming of 15 years and 04 months at the date and time of the alleged incident. The defence of the applicant appears to be that the age of the prosecutrix could only be material and relevant when even prima facie the case of rape is emerging and in this case as the hymen of the prosecutrix has been found intact and even not a scratch has been found on her body at the time of medical examination on 20.08.2022, the whole story of commission of rape is belied and what could be inferred at this stage is to the tune that the applicant was found in the house along with the prosecutrix and the commission of rape has been unnecessarily inferred without there being any evidence. Applicant is languishing in jail in this case since 11.09.2022 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

11. Keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

12. Let the accused/applicant- **Deepu** 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.

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

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

15. 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 :- 2.12.2023

Praveen