

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 1722 of 2023

Applicant :- Mohd. Riyaz

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

Counsel for Applicant :- Sharad Nandan Ojha,Akhand Pratap Singh,Eshan Garg,Somdutta Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Service upon opposite party no. 2 has been effected through S.H.O, but none has appeared before the Court.

2. Heard 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 filed seeking release of the accused/applicant **Mohd. Riyaz** on bail, who is involved in Case Crime No. 0098 of 2022, under Sections 363 & 376 I.P.C. & 5/6 POCSO Act & Section 3(2)(V) of S.C/S.T Act, 2015, Police Station-Indira Nagar, District-Lucknow North (Commissionerate, Lucknow.

4. Learned counsel for the applicant has submitted that the mother of the prosecutrix lodged the First Information Report mentioning therein that for the last five years, the applicant has been committing rape upon her minor daughter, aged about 14 years and on 16.04.2022, in the absence of the complainant, the applicant had taken her daughter to Lakhimpur Kheri. Learned counsel for applicant has disputed the age of the prosecutrix and has submitted that the date of birth of the prosecutrix pertaining to Scholar's register (Annexed as Annexure No. 3) is 03.03.2010. He has placed another date of the birth proof of prosecutrix, which is the school certificate of Awadh Public School, which indicates the date of birth of prosecutrix as 03.03.2008. Learned counsel for applicant further stated that the school certificate appears to be forged and two dates of birth itself indicate that the age of the prosecutrix is disputed and he next submitted that the date of birth of prosecutrix has been corrected in her Aadhar Card as 03.03.2004, whereas the same was recorded as 03.03.2008.

5. Learned counsel for applicant further submitted that the prosecutrix was major at the relevant time and he has invited attention of the Court towards the statement of prosecutrix recorded under Section 164 Cr.P.C. However, learned counsel for applicant has submitted that it is a case of consent and the applicant did not do anything

wrong with the prosecutrix. He further submitted that the prosecutrix refused to undergo medical examination. Learned counsel for applicant has also relied on the judgment of Hon'ble Supreme Court in the case of ***P. Yuvaprakash versus State Rep. By Inspector of Police, passed in Criminal Appeal No(s). 1898 of 2023.*** He further stated that there is no criminal history against the applicant and he is languishing in jail since 02.08.2022.

6. Learned A.G.A. for the State has opposed the prayer for bail and has pointed out that in the statement of prosecutrix recorded under Section 164 Cr.P.C, she has stated that she is 14 years of age and the applicant had come to her house as a mechanic and threatened the prosecutrix and committed rape on her on 16.04.2022, thereafter, he took her to Lakhimpur Kheri. He further submitted that the statement of prosecutrix under Section 164 Cr.P.C is unequivocal. He further submitted that as per school certificate, the age of the prosecutrix is 12 years 1 month and 13 days Since the applicant has committed a heinous offence therefore, he does not deserve mercy of the Court and thus, the bail application is liable to be rejected.

7. Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that the prosecutrix is a minor girl aged about 12 years, the argument that as per statement of prosecutrix recorded under Section 164 Cr.P.C, the applicant committed rape upon her, I do not find it to be a fit case for grant of bail.

8. The bail application of the accused/applicant Mohd. Riyaz is hereby **rejected**.

Order Date :- 8.12.2023

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