

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 3965 of 2022

Applicant :- Shiv Raj S/O Devi Prasad

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

Counsel for Applicant :- Shailendra Misra,Rajneesh Kumar Verma,Surya Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

Supplementary affidavit filed today is taken on record.

As per the report submitted by the Chief Judicial Magistrate, Lucknow, the opposite party No.2 has been personally served. The State has also enclosed with its counter affidavit the proof of service on opposite party No.2 transmitted to them by the concerned police station then, the opposite party No.2 has been sufficiently served, however, she is not represented.

Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.

This bail application has been moved by the accused/applicant- **Shiv Raj** for grant of bail, in Case Crime No.214/2021, under Sections 363/366/376 I.P.C. & 3/4 POCSO Act, Police Station- Saadatganj, District- Lucknow, during trial.

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 maternal grandmother of the prosecutrix on 02.12.2021 with the allegations that her maternal grand-daughter (prosecutrix), aged about 16 years, had gone to buy some grossery items but did not return. After the recovery of the prosecutrix, the statement of the prosecutrix was recorded under Section 161 Cr.P.C. wherein she stated that on 01.12.2021, she had gone to purchase some grossery items and from there she was enticed away by the applicant, however, there is no allegation of commission of sexual assault in her statement. In the statement of the prosecutrix recorded under Section 164 Cr.P.C. she, in detail, has unfolded the whole story to the tune that when she had left her home on 01.12.2021, the reason was the behaviour of her family members and she had left the house in a state of anger

and she had met with a boy, who had given him Rs.2,00/- and escorted her to a bus, which was bound for Kanpur. When she arrived at Kanpur, she met with the applicant and as her medical condition was not good and she was also vomiting, applicant helped her and taken her to his house where she resided for 2-3 days. It is further stated that the applicant and his family members treated her with honour, however, they also cohabited and the sexual relations between them were established with her consent and she also wanted to marry him (applicant).

It is vehemently submitted that the applicant admittedly was not in contact with the prosecutrix and he had only helped her and even if the statement of the prosecutrix given under Section 164 Cr.P.C is believed, it would emerge that they developed liking towards each other and have cohabited with free consent of the prosecutrix.

It is further submitted that so far as the age of the prosecutrix is concerned in first information report, she is stated to be of 16 years of age, while the investigating officer during the course of investigation has collected the certificate given by Radiant Public School to the tune that the prosecutrix had studied there in nursery class where her date of birth is shown as 27.04.2007.

It is vehemently submitted that prosecutrix in her statement recorded under Section 164 Cr.P.C stated that she is not an educated lady and in view of the statement of prosecutrix given under Section 164 Cr.P.C., the certificate that too of the class of nursery may not be given any importance, moreso, when no basis has been shown in the certificate on the basis of which date of birth of the applicant has been registered in the school and the prosecutrix has not been subjected to ossification test.

It is next submitted that the statement of the prosecutrix has also been recorded before the trial Court and there is no apprehension that the applicant may in any way influence the prosecutrix and he is in jail in this case since 07.12.2021 and the pace with which the case is traveling before the trial Court, the same is not expected to conclude in near future. The applicant is also not having any criminal antecedent and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty.

Learned A.G.A., on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and therefore, he is not entitled to be released on bail.

Having heard learned counsel for the parties and having perused the record, there appears discrepancy so far as the age of the prosecutrix is concerned, in the first information report, her age has been shown as 16 years while she in her statement recorded under Sections 161 and 164 Cr.P.C. has also stated her age to be of 16 years and a certificate from Radiant Public School is shown to have been collected by the investigating officer wherein the date of birth is shown as 27.04.2007, however, no basis has been shown by the school on which the date of birth of the prosecutrix is recorded in the school. Therefore, the age of the prosecutrix is yet to be finally adjudicated by the trial Court subject to the evidence led by the parties.

Coming to the allegations leveled against the applicant, it may be inferred that applicant was not known to the prosecutrix from before the incident as he is a resident of Kanpur. It is by sheer chance that when the prosecutrix has left her home, she met him at Kanpur bus station and as the prosecutrix was ill and was also vomiting the applicant appears to have extended his helping hand as confessed by the prosecutrix in her statement recorded under Section 164 Cr.P.C.. the applicant having regard to the medical condition of the victim had taken her to his home where the prosecutrix admitted to have resided with his family members and the further facts may be better adjudicated by the trial Court as the case of the prosecutrix thereafter appears to be that the applicant has taken advantage of the tender age of the prosecutrix while the prosecutrix herself in her statement recorded under Section 164 Cr.P.C. has stated that the cohabitation between her and applicant had taken place with her free will and consent.

Therefore, in the considered opinion of this Court, this aspect of the matter may be better left for the trial Court for adjudication, however, having regard to all the facts and circumstances of the case and also keeping an eye on the fact that the applicant has not enticed away the prosecutrix rather they met by chance and he is not having any criminal antecedent and in jail in this case since 07.12.2021, the facility of bail may be extended to him. The presence of the applicant could be secured before the trial court by placing adequate conditions.

With the aforesaid observation/ directions, the bail application is **allowed**.

Let the accused/applicant- **Shiv Raj** 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.

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

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

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 of this Court on the merits of the case.

Order Date :- 11.10.2023

Gurpreet Singh