

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4384 of 2023

Applicant :- Sunil Kumar @ Pradeep @ Chhota

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

Counsel for Applicant :- Arun Singh Somvanshi

Counsel for Opposite Party :- G.A., Dr. Shailendra Sharma, Shitesh Jha

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the communication sent by the C.J.M., Lakhimpur Kheri of date 18.4.2023, the complainant/informant has been sufficiently served. However, he is not represented.
2. Shri Suresh Kumar Gupta, Advocate has filed his power/vakalatnama on behalf of the victim of the instant case, the same is taken on record and he informs that the victim is present before this Court in person. Supplementary affidavit filed by the applicant is also taken on record.
3. As the victim is present before this Court, some interaction was made with her in order to assess the real state of affairs and she informs that she and the applicant had already solemnized marriage, and a child is also born out of this wedlock and she is living in the house of her in-laws (parents of the applicant) and she is not having any objection, if the facility of bail is extended to the applicant.
4. Heard learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
5. This bail application has been moved by the accused/applicant- **Sunil Kumar @ Pradeep @ Chhota** for grant of bail, in Case Crime No. 521 of 2022, under Sections 363, 366, 376 IPC & Section 3/4 of POCSO Act, Police Station Mailani, District Lakhimpur Kheri, during trial.
6. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case and he has not committed any offence as claimed by the prosecution.

7. It is further submitted that the FIR of this case has been lodged by the father of the prosecutrix/victim on 06.12.2022 alleging therein that the applicant had enticed away her minor daughter aged about 13 years and she had already taken with her some jewellery and Rs. 2,700/- cash. On being recovered, the statements of the prosecutrix/victim were recorded under Sections 161 & 164 CrPC wherein she admitted to have solemnized marriage with the applicant as she was being assaulted and scolded by her parents and she and the applicant were living as husband and wife and also that she had gone with the applicant on her own volition and consent.

8. It is further submitted that she was also subjected to medical examination and no abnormality or injury of any kind has been found therein. Moreover, the age of the prosecutrix/victim, as per her educational credentials, is a little less than 15 years, but through radiological examination, her age has been assessed through ossification process as 18-20 years and as the age of the prosecutrix/victim has been recorded in the school records without there being any basis, the same may not be deemed conclusive and is subject to the determination by the trial court.

9. It is also submitted that the applicant is in jail in this case since 23.12.2022 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty. Further detention of the applicant in jail may ruin the matrimonial prospects of the prosecutrix/victim as well as her newly born son.

10. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

11. Shri Suresh Kumar Gupta, learned counsel representing the prosecutrix/victim vehemently submits that the age of the prosecutrix/victim recorded in the school may not be deemed correct, as her age through ossification process has been assessed as 18-20 years and the prosecutrix/victim in her statements recorded under Sections 161 & 164 CrPC has also stated her age to be of 18 years.

12. It is also submitted that further detention of the applicant in jail may ruin the matrimonial relations of the prosecutrix/victim and presence of the applicant is required for her as well as for her newly born son and she is not having any objection, if the facility of bail is extended to the applicant.

13. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix/victim in her statements recorded under Sections 161 & 164 CrPC has not levelled any allegations against the applicant, she rather stated to have accompanied the applicant on her own and solemnized marriage with him. Today also, when an interaction has been made with the prosecutrix/victim, who is present before this Court, she in categorical terms stated that she had gone with the applicant on her own volition and consent and sexual relations have also been established with her free consent and she is also blessed with a boy child and is now living in her in-laws' house and further detention of the applicant in jail may be detrimental to her matrimonial aspects/relations. The applicant is in jail in this case since 23.12.2022 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

14. Having regard to all the facts and circumstances of this case particularly, the fact that the prosecutrix/victim has been blessed with a boy child out of the wedlock solemnized with the applicant and now, she is living with the family members of the applicant, in the considered opinion of this Court, the facility of bail may be extended to the applicant. Thus, this bail application moved on behalf of the applicant is **allowed**.

15. Let the applicant- **Sunil Kumar @ Pradeep @ Chhota** involved in the aforesaid case be released on bail on 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.

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

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

18. Observations made herein-above are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 2.12.2023
Shravan