

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5151 of 2023

Applicant :- Rohit Kumar

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

Counsel for Applicant :- Abhijeet Kumar Srivastav, Anil Kumar Tripathi, Nazmul Hasan, Sonam Kumari Thapa, Vinay Misra

Counsel for Opposite Party :- G.A., Aman Kumar Shrivastav, Divyanshu Tripathi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Anil Kumar Tripathi, learned counsel for the accused-applicant; learned A.G.A. for the State as well as Shri Aman Kumar Shrivastav, learned counsel for the complainant/informant and perused the record.

2. This bail application has been moved by the accused/applicant- **Rohit Kumar** for grant of bail, in Case Crime No. 1314/2022, under Sections 363, 366, 376 I.P.C. & Section 3/4 POCSO Act, Police Station- Kotwali Sadar, District- Lakhimpur Kheri, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that the first information report of this case has been lodged by the father of the prosecutrix on 07.11.2022 at Police Station- Kotwali Sadar, District- Lakhimpur Kheri alleging therein that his daughter aged about 15 years and 4 months has been enticed away by the applicant at 04.00 PM on 04.11.2022 and the abduction of his daughter has been facilitated by the other co-accused persons named therein.

5. It is vehemently submitted on behalf of the applicant that after recovery of the prosecutrix, her statement was recorded under Sections 161 and 164 Cr.P.C., wherein she has stated her age to be of 20 years and also that she was in love with the applicant and had left her home on her own volition, as her family members had refused to marry her to the applicant and

therefore, they had gone to Lucknow and solemnized Court marriage with the applicant and persist in this regard has been made on a certificate issued by *Arya Samaj, Sector -H (Harsh Vihar Purniya), Aliganj, Lucknow*, a copy of which has been placed as Annexure No.2 at page No.21 of the paper book.

6. It is vehemently submitted that in her statement recorded under Section 164 Cr.P.C., the prosecutrix has not alleged any cohabitation and the Investigating Officer appears to be in some illusion in inferring that sexual intercourse has taken place between the applicant and the prosecutrix and the charge sheet has been filed only on account of this assumption.

7. It is further submitted that as per the educational credential of the prosecutrix, her age was 15 years and 4 months at the date and time of the alleged incident while in her statement recorded under Section 161 & 164 Cr.P.C., she has stated her age to be of 20 years, while she was under medical examination, wherein no abnormality or injury of any kind has been found, she has stated her age to be of 17 years, thus, the age of the prosecutrix recorded in her education credentials may not be termed/ deemed as conclusive and the same is subject to the determination by the trial Court. The applicant is in jail in this case since 15.12.2022 and he is not having any criminal history, charge-sheet in this case has already been submitted 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.

8. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

9. Shri Aman Kumar Shrivastav, learned counsel appearing for the complainant/informant, on the other hand, opposes the prayer of bail of the applicant on the ground that the prosecutrix/ victim was not of consensual age at the date and time of the alleged incident and therefore, her consent is/was immaterial.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix as per her educational credentials is 15 years and 4 months at the date and time of the alleged incident, while in her medical examination report, her age has been shown as 17 years and in her statement recorded under Sections 161 and 164 Cr.P.C., she

has stated her age to be of 20 years. The age of the applicant is also shown to be of 22 years. No basis has been shown in the school certificate relied by the prosecution so as to reflect prima facie as to on what basis the date of birth of the prosecutrix was recorded in the school record and it is in this background, it is submitted that the age of the prosecutrix is yet to be determined by the trial Court and her age as shown in her education credentials i.e. 15 years and 4 months may not be deemed as conclusive. The prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C has not alleged any imputation against the applicant, so much so in her statement recorded under Section 164 Cr.P.C., she has not alleged sexual assault or even cohabitation. Charge-sheet in this case has already been filed. Applicant is in jail in this case since 15.12.2022 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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- **Rohit Kumar** 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 contact the prosecutrix/ victim, informant or any of their family members either directly or indirectly or through any social platform e.g. Facebook, Whatsapp etc. and the violation of this condition alone shall be sufficient ground for the trial Court to cancel the facility of bail extended by this Court.

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

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

(iv) 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 of this Court on the merits of the case.

Order Date :- 26.10.2023

Gurpreet Singh