

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1150 of 2023

Appellant :- Rahul Awasthi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko.

Counsel for Appellant :- Vinay Kumar Verma, Neetesh Kumar

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

(Order on bail application)

Heard learned counsel for the applicant/appellant and learned A.G.A for the respondent State as well as perused the record.

The present criminal appeal under Section 374 (2) Cr.P.C. has been filed by the appellant against the judgment of and order dated 10.3.2023 passed by learned Additional District & Sessions Judge/Special Judge (POCSO Act), Barabanki, in Sessions Trial No.88 of 2015 arising out of Case Crime No. 144 of 2015 Police Station Haidergarh, District Barabanki.

Learned counsel for the appellant submits that the prosecutrix's age has not been determined by the learned trial court while convicting the appellant under Section 363 and 366, I.P.C.. The radiological examination has been refused by the prosecutrix and her father. So far as the school age is concerned, photocopy of the high school mark-sheet has been filed as Ka13, however, the same has neither been exhibited nor proved. As per the statement of the prosecutrix under Section 161 Cr.P.C., Section 164 Cr.P.C. and also before the Court which is evident that the prosecutrix was a consenting party. She on her went away upon the bike of the applicant and traveled places and returned on her own after two days. No corroborative material has been found in the medical examination of the prosecutrix. During trial the appellant was in jai since 10.3.2023.

It is further submitted that, during the course of trial, the appellant was on bail and there is no instance of misusing the liberty so granted by this Court.

It is further submitted by learned Counsel for the appellant that there is no likelihood that the appellant after release on bail may flee from the process of law or will misuse the liberty of bail, so granted by this Court.

Learned A.G.A., has opposed the prayer for bail of the appellant, however, he could not confront the factual

submissions made by learned counsel for the appellants.

On due consideration to the statement of the victim, medical examination report of the victim and fact that no radiological examination for assessing the age was refused by the father and the victim both, the appellant was on bail during trial, the appellant is in jail since 10.3.2023, and also there is no likelihood that the present appeal may be listed for hearing in the near future, this Court is of the view that the case of bail is made out.

Accordingly, the bail application is **allowed**. Let the appellant **Rahul Awasthi** said to be involved in aforesaid case be released on bail on his furnishing a personal bond with two sureties, each in the like amount to the satisfaction of the court concerned subject to following conditions:-

- (i) The appellant shall cooperate in the disposal of appeal without seeking unnecessary adjournment.
- (ii) The appellant 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.

Office is directed to list this appeal on its turn.

(Shamim Ahmed, J.)

Order Date :- 24.11.2023
A.Nigam