

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5352 of 2023

Applicant :- Bhure Alias Niranjan Gaud

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

Counsel for Applicant :- Nijam Ahamad

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per communication of the Chief Judicial Magistrate, Ambedkar Nagar, opposite party no.2 has been sufficiently served, however, he is not represented.
2. Heard Shri Nijam Ahamad, 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 moved by the accused/applicant- **Bhure Alias Niranjan Gaud** for grant of bail, in Case Crime No.248 of 2022, under Sections 363, 366, 376 I.P.C. and 3/4 of the P.O.C.S.O. Act, Police Station Kotwali Akbarpur, District Ambedkar Nagar, during trial.
4. 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.
5. It is further submitted that after lodging of the F.I.R. on 14.05.2022 by the father of the prosecutrix, she was recovered on 15.10.2022 and her statement under Sections 161 and 164 Cr.P.C. was recorded, wherein she has not levelled any allegation against the applicant and has stated to have accompanied the applicant with her free will and wish and also to have solemnized marriage in a temple and also they were living as husband and wife. Medical report of the prosecutrix is also clean.
6. It is further submitted that statement of the informant has been recorded before the trial court as P.W.-1 and while he in cross examination has admitted that the age of the prosecutrix in the school was recorded three years less than her actual age and also that the marriage of the prosecutrix was solemnized

with the applicant but as he was not taking her to his house, the F.I.R. has been lodged on the persuasion of other villagers.

7. It is vehemently submitted that it has been admitted by the informant that the age of the prosecutrix in the school was registered three years less than her actual age while as per ossification test, her age has been assessed as 16-17 years and in the background of the admission of the father of the prosecutrix, her age shown as per her educational credential may not be deemed as correct and thus the prosecutrix was major at the date and time of the alleged incident and since the prosecutrix was married to the applicant, no offence in fact has been committed by the applicant.

8. It is next submitted that applicant is in jail in this case since 15.10.2022 and he is not having any criminal history 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.

9. 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.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix in her statement recorded under Sections 161 and 164 Cr.P.C. has not alleged any imputation against the applicant rather she admitted to have accompanied the applicant with her free wish and will and to have established sexual relations with her consent and also solemnized marriage with the applicant in a temple. The father of the prosecutrix has been testified before the trial court and he in cross examination has admitted that age of the prosecutrix was recorded three years less than her actual age in the school. Bone age of prosecutrix has been determined as 16-17 years, thus having regard to two years variable to such determination (through ossification test), the prosecutrix prima facie appears to be major and she has not deposed any imputation against the applicant. Applicant is in jail in this case since 15.10.2022 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- **Bhure Alias Niranjan Gaud** 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.

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 :- 31.10.2023

Anupam S/-