

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6043 of 2023

Applicant :- Seru

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

Counsel for Applicant :- Vikas Sharma, Anil Pandey, Shiv Kumar Soni

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the communication sent by the Chief Judicial Magistrate, Hardoi of date 05.06.2023 as well as the communication sent by the Police Station Pihani, District Hardoi to learned A.G.A., the opposite party no.2 (complainant) has been sufficiently/personally served. However, she is not represented.

2. Heard 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- **Seru** for grant of bail, in Case Crime No. 662 of 2022, under Sections 376, 363, 366, 504, 506 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012, Police Station Pihani, District Hardoi, during trial.

4. 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 mother of the prosecutrix on 02.11.2022 alleging therein that on 25.04.2022 the prosecutrix, her daughter aged about 17 years and 09 months has enticed away by the applicant and she had returned back on 08.05.2022 and a compromise had taken place through the mediation of the local police that on attaining the age of majority the applicant would solemnize marriage with the prosecutrix. However, when the informant and his wife requested the parents of the applicant to solemnize marriage of the applicant with the prosecutrix, they demanded dowry and refused and also ousted the informant and his wife from their house. The statement of the prosecutrix was recorded under Section 161 and 164 Cr.P.C. wherein she has alleged allegation of rape.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that it is admitted to the informant in F.I.R. that the prosecutrix/victim had accompanied the applicant on 25.04.2022 and returned on 06.05.2022. Similarly the prosecutrix in her statement recorded under Section 161 Cr.P.C. has specifically stated to have accompanied the applicant with her free wish and volition and also that she remained with the applicant for many days and it is after the return of the prosecutrix to her house, it is alleged that a compromise had taken place with the prosecutrix that she would be married to the applicant. It is also submitted that even if this story of the prosecution is believed as it is, the initial act of the prosecutrix in accompanying the applicant and making sexual relations was a voluntary and consensual act devoid of any promise of marriage and as per the own story of the prosecution, the promise of marriage was extended later on, therefore, the same having regard to the consensual act of the applicant, may not amount to rape or sexual assault.

6. It is further submitted that radio-logical age of the prosecutrix has been assessed as 17 years, while as per her educational credentials her age is coming as 17 years and 09 months at the date and time of the alleged incident. Thus, she was almost major and was having sufficient intellect to understand her welfare as well as the nature of the act. Applicant is languishing in jail in this case since 08.12.2022 and he is not having any criminal history. Charge sheet in this case has already been filed and there is no apprehension that after being released on bail he may flee from the course of law or may otherwise misuse the liberty.

7. 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, therefore, he is not entitled to be released on bail.

8. Perusal of the record would reveal that the age of the prosecutrix at the relevant point of time on the basis of educational credentials was 17 years and 09 months and, thus, having regard to the two years variable either side pertaining to the age assessed through radio-logical process, the prosecutrix appears to be almost major at the date and time of the alleged incident. She is admitted in her statements recorded under Section 161 and 164 Cr.P.C. that she had accompanied the applicant and she was taken by the applicant to his home. There appears little contradiction with regard to the manner where by the prosecutrix was taken, as in her statement recorded under Section 161 Cr.P.C., it is stated that she was taken on the motorcycle, however, in her statement recorded

under Section 164 Cr.P.C., she had categorically stated to have accompanied the applicant when her parents were sleeping. However, this statement has been qualified by saying that she was taken by force and, therefore, she could not raised an alarm. However, it is admitted to her that the promise of marriage was extended by the applicant when they have returned back. The defence of the applicant appears to be that prosecutrix was major and her consent may be inferred from her conduct and the promise of marriage, even if the case of the prosecution is believed as it is, was extended after return of the prosecutrix to her home and the same was not prior to the sexual intercourse.

9. Be that as it may, the disputed questions of fact be better left to be determined by the trial Court and it would not be in the interest of justice that any opinion even prima facie be open by this Court, as the same may derail the discretion of the trial Court either way.

10. Suffice is to say that having regard to the age of the prosecutrix, her statements recorded under Section 161 and 164 Cr.P.C. and having an eye that F.I.R. has been lodged by moving an application under Section 156(3) Cr.P.C., a case for bail is made out in favour of the applicant moreso, when he is not having any criminal antecedents. The bail application is thus **allowed**.

11. Let the accused/applicant- **Seru** 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.

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

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

14. 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 on the merits of the case.

Order Date :- 2.12.2023

Praveen