

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6736 of 2023

Applicant :- Amit Kumar

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

Counsel for Applicant :- Abhishek Awasthi, Ram Saran Awasthi, Shuchita Singh

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicant, Sri Mohd. Asif Khan, learned A.G.A. for the State and perused record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.314 of 2023 under Section 363, 376 IPC and Section 3/4 POCSO Act, 2012, and Section 3 (2) (v) SC/ST Act, PS Kotwali Nagar, district Barabanki.

3. Learned counsel for the applicant has invited attention of this Court towards statement of prosecutrix under Section 164 CrPC in which she has deposed that the applicant was known to her for the last four months and she developed love relation with him. She further deposed that on his call, she had gone to Dundpurwa Crossing near Deva where, the applicant met and, thereafter, she remained with him in a rented room for four days and physical relation was established by the applicant forcefully. Learned counsel for the applicant has submitted that it is a case of consent because, the first part of the statement of prosecutrix under Section 164 CrPC itself indicates that the prosecutrix had gone along with the applicant to Dundapurwa Crossing near Deva and no alarm and no protest was raised by her and she remained with the applicant in a rented room. He has further submitted that the applicant is 18 years of tender age and both had developed love relation. He has submitted that as per medical report, the age of prosecutrix was 17 years, therefore, he has requested that the upper age limit benefit may be extended and it may be inferred that at the relevant time, the prosecutrix was major. He has further submitted that the applicant has no criminal history and he is in Jail since 16.3.2023.

4. Learned A.G.A. has opposed the prayer for bail and has submitted that at the relevant time, as per the school certificate, the prosecutrix was minor, therefore, her consent has no relevance, therefore, the bail application is liable to be rejected.

5. Considering over all facts and circumstances of the case, the argument of consent, the argument that prosecutrix was 17 years of age as per medical report and by extending the two years upper age limit, it may be inferred that the prosecutrix was major at the relevant time, it is a fit case for bail.

6. Let the applicant, Amit Kumar be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

7. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 20.11.2023

Rajneesh JR-PS)