

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6927 of 2023

Applicant :- Jeeshan Ahmad

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

Counsel for Applicant :- Gyan Singh, Shyam Singh

Counsel for Opposite Party :- G.A., Ravi Shankar Mishra

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
2. This bail application has been moved by the accused/applicant Jeeshan Ahmad for grant of bail, in Case Crime No. 201 of 2022, Special Trial No.1271 of 2022, under Sections 376-D, 506 IPC and Section 5(G)6 of the Protection of Children from Sexual Offences Act, Police Station Mandhata, District Pratapgarh, during trial.
3. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication and the FIR of this case has been lodged by the victim herself on 24.06.2022 at police station Mandhata, District Pratapgarh alleging therein that co-accused Sajjad Ahmad is making sexual relations with him for the last two years and his friend (applicant) has also sexually assaulted the prosecutrix for many times and a video was made by the prosecutrix/informant under the pressure of co-accused Sajjad and that video was forwarded by the co-accused Sajjad to the applicant and that video has now been made viral and accused persons are intimidating the prosecutrix of dire consequences.
4. Learned counsel for the applicant while drawing the attention of the Court towards the statement of the prosecutrix recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. vehemently submits that it is admitted by the prosecutrix that for the last two years from before lodging the FIR she was regularly going to talab where a sexual relations were made by her with co-accused Sajjad. Though, it is asserted that an obscene video was made by her at the instance of co-accused Sajjad but the same was forwarded by co-accused to the applicant and the applicant also on the pretext of making it viral has sexually assaulted her. It is also submitted that till now when the investigation is

complete and charge sheet has been filed, the video has not been retrieved either from the mobile phone of the applicant or the co-accused Sajjad and the same was given to the Investigating Officer by the prosecutrix herself. It is also emphasized that the said video has also not been collected by the Investigating Officer from any other person thus, the story of black mailing or making sexual relations or making the same viral is patently false, absurd and could not be believed and it appears to be a clear case of consent. The age of the prosecutrix as per her educational credentials is about 16 and half years while on the basis of her ossification test, her age has been assessed as 18-20 years and though even if she was not major at the date and time of the incident she was having sufficient intellect to understand the nature of act wherein she was indulged.

5. It is also alleged that no abnormality or injury of any kind has been found in the medical examination report of the applicant and since the prosecutrix has been testified before the trial court there could not be any apprehension that any influence may be caused by the applicant if the facility of bail is granted to him.

6. It is further submitted that applicant is languishing in jail in this case since 21.09.2022, he is not having 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.

7. Learned A.G.A. opposes the prayer of bail of the applicant.

8. Learned counsel for the opposite party no.2 vehemently opposes the prayer of bail of applicant on the ground that it was on the pretext of making an obscene video of the prosecutrix viral, she was subjected to sexual assault for two long years and having regard to the fact that the same obscene video has been provided by the prosecutrix to the Investigating Officer which is available in the C.D. and memo in this regard has also been prepared, the applicant is not entitled to be released on bail.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that as per her educational credentials date of birth of the prosecutrix is 01.01.2006 by which she comes about 16 and half years on the date and time of the incident. Her age has been assessed on the basis of ossification test as 18-20 years and it is on this basis, it is submitted by the applicant that the age of the prosecutrix as shown in her educational credentials may not be conclusive and the same is yet to be decided/adjudicated by the trial court. Admittedly the case of the victim as is emerging from her

statements recorded under 161 Cr.P.C and 164 Cr.P.C is to the tune that she was having relations with co-accused Sajjad with whom she was regularly meeting and they were also cohabiting frequently at the bank of talab and on his insistence she (prosecutrix) has also made a video which was provided by her to co-accused Sajjad and it is alleged that the said video was forwarded by the co-accused Sajjad to the applicant and on the basis of that video applicant has sexually assaulted the prosecutrix/victim. Nothing has been brought before this Court which may suggest that the said video has been retrieved from the mobile phone of any of the accused person or from any other persons and the video has been given by the prosecutrix herself to the Investigating Officer. The medical reports of the prosecutrix are clean. The applicant is in jail since 21.09.2022, he is not having criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. Let the accused/applicant-Jeesan Ahmad involved in above-mentioned case, be released on bail on her 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.

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

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

13. 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 :- 28.10.2023

Renu/-