

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8224 of 2022

Applicant :- Prakash Alias Jugnu S/O Dukhram

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

Counsel for Applicant :- Brij Bhushan Singh,Bhanu Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. As per the report of the office dated 30.8.2022 and having regard to the C.A. 9 filed by the State along with its counter affidavit, it is reflected that opposite party no.2/ complainant has been sufficiently served, however, he 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- **Prakash Alias Jugnu** for grant of bail, in Case Crime / FIR No. 0282/2018, under Sections 363, 366, 376 IPC and Section 3&4 of POCSO Act, Police Station Ramgaon, District Bahraich, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that the accused-applicant has falsely been implicated in the instant case. The First Information Report has been lodged by the father of the prosecutrix on 2.12.2018 alleging therein that her daughter aged about 15/16 years has been enticed away by the applicant. On being recovered the statements of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C. wherein she stated her age to be of 15 years and categorically stated that she was in love with the applicant and with her consent had accompanied him and they had gone to the house of a relative of the applicant where sexual relations were established between them with her consent and the applicant had never extended any promise of marriage to her.

5. Highlighting the above facts, it is submitted that the prosecutrix/ victim has not alleged any allegation against the applicant in her statements recorded under Sections 161 and 164 Cr.P.C. The medical report of the prosecutrix which has

been placed as Annexure No. C.A. 7 to the counter affidavit no abnormality or injury etc. has been found and thus the medical evidence is also not in line with the oral evidence.

6. It is vehemently submitted that though the age of the prosecutrix as per her educational credentials is coming as 15 years and 5 months but her age has been assessed through ossification test as 18 years and keeping in view the fact that no basis has been shown with regard to the entry of the date of birth of the prosecutrix in School record the same without any basis may not be deemed as conclusive and has been yet to be determined by the trial court after providing opportunity to the parties to lead evidence.

7. It is further submitted that the applicant is in jail in this case since 24.03.2022 and he is not having any criminal history. Charge sheet in this case has already been submitted and there is no apprehension that the accused-applicant after release on bail, may flee from the process of law or may otherwise misuse the liberty.

8. Learned A.G.A. on the other hand opposes the prayer of bail of the applicant on the ground that sexual assault has been committed with a girl of tender age and therefore he 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 the applicant is aged about 27 years and the prosecutrix in the FIR and in her statement recorded under Sections 161 and 164 Cr.P.C. and also on the basis of her educational credentials is shown aged about 15-16 years. The defence of the applicant appears to be that the prosecutrix has not stated any thing against the applicant, rather she stated to be in love with him and also that it was she who had gone with him and sexual relations were also established with her free wish and will. It is also the defence that having regard to the variance in age of the prosecutrix recorded in School record and assessed through ossification test the age of the prosecutrix recorded in the School record without any basis may not be deemed as conclusive and the same is at yet to be determined by the trial court after providing an opportunity to the parties to leave evidence. The applicant is in jail in this case since 24.03.2022 and he is not having any criminal history.

10. 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 and demerits of the case, I am of the

considered view that applicant has made out a case for bail. The bail application is **allowed**.

11. Let the applicant- **Prakash @ Jugnu** involved in the aforesaid case be released on bail on 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 are only for the purpose of disposal of bail application and the same shall not have any bearing on the trial of the case.

Order Date :- 3.11.2023

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