

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7453 of 2023

Applicant :- Heera Soni

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

Counsel for Applicant :- Lalu Prasad Bhatt

Counsel for Opposite Party :- G.A.,Gyanendra Pathak

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Gyanendra Pathak, learned counsel appearing for the opposite party no.2/complainant submits that he would not file counter affidavit/objections.
2. Heard Shri Lalu Prasad Bhatt, learned counsel for the accused-applicant, Shri Gyanendra Pathak, learned counsel for the opposite party no.2/complainant 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- **Heera Soni** for grant of bail, in Case Crime No. 55 of 2023, under Sections 363, 376 I.P.C. and Section 3/4 P.O.C.S.O. Act, Police Station Nawabganj, District Bahraich, 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 father of the prosecutrix on 25.03.2023 at Police Station Nawabganj, District Bahraich with the allegations that the applicant has enticed away his daughter with the help of co-accused persons. However, after recovery of the prosecutrix/victim her statement was recorded under Section 161 and 164 Cr.P.C., wherein she stated her age to be of 18 years and 17 years, respectively and in 161 Cr.P.C. statement stated to be talking to the applicant for the last seven years and had gone with him on 22.03.2023 to Nanpara and from Nanpara to Jalandhar. However, in her statement recorded under Section 164 Cr.P.C. she has changed the story to the tune that she was taken by force by the co-accused persons, namely, Mahesh, Balram and Dinesh and they had taken her to Jalandhar in an unconscious state and she was kept in a room where she was also raped by them and thereafter she was handed over to the applicant who has also committed sexual assault on her.

5. Highlighting the above facts, it is vehemently submitted that in the statement of the prosecutrix recorded under Section 164 Cr.P.C. she has changed her story twice as she has stated that when she was abducted by co-accused persons they committed sexual assault on her but subsequently in the same breath she stated that she was not subjected to sexual assault by these persons and they only handed over to her with the applicant, who had taken her to Jalandhar where she was raped in a hotel.

6. It is further submitted that the age of the prosecutrix as per the ossification test has been assessed as 16-17 years and having regard to the two years variable either side she appears to be major at the date and time of the incident and if her statement recorded under Section 161 and 164 Cr.P.C. are read conjointly, it would emerge that she was a consenting party, as she had not raised any alarm while travelling with the applicant.

7. It is next submitted that applicant is languishing in jail in this case since 01.04.2023 and criminal history of one case has been adequately explained in para no.14 of the bail application. However, he is not a convict 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.

8. 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.

9. Shri Gyanendra Pathak, learned counsel for the opposite party no.2/complainant vehemently opposes the prayer of bail of the applicant on the ground that in the 'parivar register', a reference of which, has been given in the rejection order of the trial Court, the age of the prosecutrix has been shown about 15 years and 10 months and, therefore, having regard to her tender age the applicant is not entitled to be released on bail.

10. Perusal of the record in the background of the submissions advanced by learned counsel for the parties, would reveal that as per the ossification test the age of the prosecutrix has been determined as 16-17 years. Thus, having regard to two years variable either side pertaining to the age determined through radio-logical process the prosecutrix may be of 19 years or 14 years, as the case may be. However, she has stated her age to be of 18 years and 17 years in her statement recorded under Section 161 and 164 Cr.P.C.. Material contradictions have been highlighted by learned counsel for the applicant in the statements of the prosecutrix recorded under Section 161 and 164 Cr.P.C. also with regard to the sexual assault committed on

her. Criminal history of one case has been adequately explained. Applicant is languishing in jail in this case since 01.04.2023 without any criminal antecedents and the presence of the applicant may be secured before the trial court by placing adequate conditions.

11. 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- **Heera Soni** 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 on the merits of the case.

Order Date :- 17.10.2023

Praveen