

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9453 of 2023

Applicant :- Aman Prasad @ Surendra

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

Counsel for Applicant :- Ashish Kumar Singh, Anand Kumar Yadav, Anuj Pandey

Counsel for Opposite Party :- G.A., Jyoti Rajpoot, Laxmi Verma, Jyoti Rajpoot

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Anuj Pandey, learned counsel for the accused-applicant; learned A.G.A. for the State as well as Ms. Laxmi Verma, learned counsel appearing for the opposite party No.2 and perused the record.

2. This bail application has been moved by the accused/applicant- **Aman Prasad @ Surendra** for grant of bail, in Case Crime No. 60/2023, under Sections 363, 366, 376, 506 I.P.C. & 3/4 POCSO Act, Police Station- Khandasa, District- Ayodhya, during trial.

3. Learned counsel for the accused-applicant while pressing the bail application submits that the applicant has been falsely implicated in this case and he has not committed any offence as claimed by the prosecution.

4. It is further submitted that the first information report of this case has been lodged by the father of the prosecutrix on 31.03.202 at Police Station- Khandasa, District- Ayodhya, alleging therein that the applicant has enticed away his daughter aged about 16-17 years on 26.03.2023 and when he had gone to his house, his family members intimidated him and also abused. On 07.04.2023, the prosecutrix was recovered and her statement under Section 161 Cr.P.C was recorded, wherein she stated to have accompanied the applicant with her consent as they were known to each other for the last two years and she was in love with her and they have also solemnized marriage and when she was returning, she was apprehended by the police. In her statement recorded under Section 164 Cr.P.C., she though alleged that on 26.03.2023 at 09.00 PM, when she had gone to ease out, she was abducted by the applicant, however, admitted that she was on talking terms with him and she was

taken away with force by the applicant as he wanted to marry her and therefore, she did not resist and they both had gone to *Mathura* and had returned on the same day and they again went to Lucknow where they solemnized marriage in 'Arya Samaj' and an application was also moved by the applicant for Court marriage, but as she was not of 18 years, the Court marriage could not be solemnized and their application was rejected.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that neither in her statement recorded under Section 161 Cr.P.C nor in her statement recorded under Section 164 Cr.P.C., the prosecutrix has imputed any allegations against the applicant except that she taken by force, but in the same breath, she has qualified her statement by saying that she also did not resist.

6. It is also submitted that victim has also stated in her statement under Section 164 Cr.P.C. that her age as per her aadhar card is 19 years and the applicant was in knowledge of this age. The prosecutrix initially refused to undergo any medical examination, but subsequently her medical examination has been done on 08.04.2023, however, no abnormality or injury etc. have been found therein.

7. It is next submitted that applicant is in jail in this case since 09.04.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted 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.

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 having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

9. Ms. Laxmi Verma, learned counsel appearing for informant/complainant vehemently opposes the prayer of bail of the applicant on the ground that the prosecutrix was not of consenting age and therefore, the statement given by her under Section 161 and 164 Cr.P.C may not be read against her and as the sexual intercourse has been committed with a minor girl, the applicant is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix in her statements as well as during the course of medical examination have stated her age to be of 18 years. In her statement recorded

under Section 164 Cr.P.c., she has stated that as per Aadhar Card, her age is 19 years while as per her educational credentials, wherein her date of birth is shown as 15.10.2006, she is coming of the age of 16 years, 5 months and 11 days. Thus, the age of the prosecutrix is yet to be adjudicated by the trial Court having regard to the discrepancy in her age. The medical report of the prosecutrix is clean. In her statement recorded under Sections 161 and 164 Cr.P.C., she admitted to be in love with the applicant and also that she had accompanied him and did not resist. She also stated to have solemnized marriage in '*Arya Samaj*' and also that their application moved for Court marriage was rejected as she was not major. In the considered opinion of this Court, though, the prosecutrix was admittedly not major, but was having sufficient intellect having regard to her age to understand the nature of the act or about her welfare. The applicant is already been in jail in this case for six months and the trial has not started yet. Applicant is in jail in this case since 09.04.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

11. Having regard to the overall facts and circumstances of the case and 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- **Aman Prasad @ Surendra** 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 of this Court on the merits of the case.

Order Date :- 19.10.2023

Gurpreet Singh