

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7772 of 2023

Applicant :- Vijay Kumar Maurya

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

Counsel for Applicant :- Kapil Misra, Anurag Tilhari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per communication sent by the C.J.M., Raebareli, the opposite party no. 2/informant has been sufficiently served. However, no one is present on his behalf.
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- **Vijay Kumar Maurya** for grant of bail, in Case Crime No. 36 of 2022, under Sections 376, 328, 506 IPC & Sections 3/4 of the POCSO Act, Police Station Inhauna, District Amethi, 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 and he has not committed any offence as claimed by the prosecution.
5. It is further submitted that the FIR of this case has been lodged by the father of the prosecutrix/victim on 25.12.2022 by moving an application under Section 156(3) CrPC under the orders of the Special Court, POCSO Act, Raebareli and the allegations therein have been drafted under the aid and advice of a legal professional and the same could not be believed having regard to the inherent weakness and improbability of the incident.
6. It is further submitted that the statement of the prosecutrix/victim was also recorded under Sections 161 & 164 CrPC wherein she has improvised the incident by saying that for the last six years, she was talking with the applicant and it was about six years ago, when she was a student of class VIII, sexual assault at first was committed by the applicant and thereafter, on the pretext of solemnizing marriage with the

prosecutrix/victim, the applicant was regularly committing rape on her.

7. Highlighting the above facts, it is vehemently submitted that the incident/events as narrated by the prosecutrix/victim are in contrary to the version of the incident as stated by the informant (her father) in his application moved under Section 156(3) CrPC and even if the case of the prosecution is believed, the only fact which may surface is that the prosecutrix/victim was a consenting party. As per educational credentials of the prosecutrix/victim, she was aged about seventeen and a half years and thus was having sufficient intellect to understand the nature of the act as well as her welfare. Therefore, keeping in view the fact that the prosecutrix/victim was a consenting party, no culpability may be attached when consensual relations have been established between the applicant and the prosecutrix/victim.

8. It is also submitted that the medical report of the prosecutrix/victim is also clean and thus, in support of the oral allegations as stated by the prosecutrix/victim in her statements recorded under Sections 161 & 164 CrPC, there is no medical evidence to corroborate the same.

9. It is further submitted that the applicant is in jail in this case since 25.02.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed 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.

10. Learned A.G.A., on the other hand, submits that having regard to the manner in which the offence has been committed the applicant is not entitled for any relief.

11. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix/victim, as per her educational credentials, was about seventeen and a half years at the date and time of the alleged incident. Though she was minor at the relevant point of time, however, a girl of the age of seventeen and a half years may be presumed to be having sufficient intellect to understand her welfare. The FIR of this case has been lodged under the orders of the Special Court, POCSO Act, Raebareli passed under Section 156(3) CrPC and the defence of the applicant appears to be that the allegations of the FIR have been aggravated with the aid and advice of a legal professional. The first sexual assault on the prosecutrix/victim, as stated by her, has been committed six years before recording of her statements under Sections 161

& 164 CrPC and thereafter, a mobile phone was also shown to have been given by the applicant, which was also in the knowledge of her father. In this regard, the defence of the applicant appears to be that even if the case of the prosecution is believed, the prosecutrix/victim was a consenting party and since she was having sufficient intellect, the consensual relations made between the applicant and the prosecutrix/victim may not be termed as sexual assault or rape. The applicant is in jail in this case since 25.02.2023 without any criminal history. Charge sheet in the matter has already been filed. His presence could be secured before the trial court by placing any adequate conditions.

12. 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**.

13. Let the applicant- **Vijay Kumar Maurya** 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.

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

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

16. 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 :- 29.11.2023
Shravan