

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7814 of 2023

Applicant :- Golu Patel @ Brajendra

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

Counsel for Applicant :- Brij Bhushan Singh,Pranjal Apurva,Sandeep Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.
2. As per the communication sent by the Chief Judicial Magistrate, Pratapgarh of date 17.07.2023, opposite party no.3(complainant) has been served personally. However, he is not represented.
3. Heard learned counsel for the accused-applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Golu Patel @ Brajendra** for grant of bail, in F.I.R./Case Crime No. 213 of 2022, under Sections 363, 366, 376 I.P.C. and Section 5(J)(II) & 6 of the Protection of Children from Sexual Offences Act, Police Station Maheshganj, District Pratapgarh, during trial.
5. 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 19.08.2022 alleging therein that the applicant has enticed away his daughter on 08.08.2022 at 9:00 pm. However, on being recovered, the statement of the prosecutrix was recorded under Section 161 and 164 Cr.P.C., wherein she stated to be in a relationship with the applicant and as her family members wanted to marry her somewhere else, she had left her home herself and had gone to Lucknow and thereafter she was wandering there and ultimately got the phone number of the applicant and called him at the place of her residence and had gone to Delhi where they had solemnized marriage and started living as husband and wife. It was also stated that she is pregnant by two months.

6. Highlighting the above facts, it is vehemently submitted that the prosecutrix as per her educational credentials was about 17 years and 11 months at the date and time of the incident and since she had left her home herself and stated to have solemnized marriage with the applicant and was also pregnant and has now given birth to a child and is living with the family members of the applicant in their house, no offence in fact has been committed by the applicant and the investigating officer appears to have submitted the charge sheet without there being any material or evidence only on the score that the prosecutrix was not found major.

7. It is next submitted that applicant is languishing in jail in this case since 13.02.2023 and he is not having any criminal history. Charge sheet in this case has already been filed 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. Having heard learned counsel for the parties and having perused the record, it is evident that the prosecutrix at the date and time of the alleged incident was one month short of attaining majority. As per her educational credentials her date of birth is 16.09.2004, whereby she comes around about 17 years and 11 months of age at the relevant point of time. The prosecutrix in her statements recorded under Section 161 and 164 Cr.P.C. had not alleged any allegations against the applicant and it appears that only on account of the fact that the prosecutrix at the relevant point of time was not major, the investigating officer has submitted the charge sheet. The prosecutrix was also found pregnant at the time of her recovery and now is stated to have given birth to a child. She is also stated to be living with the family members of the applicant in the house of the applicant. Applicant is languishing in jail in this case since 13.02.2023 without any criminal antecedents. Charge sheet in this case has also been filed and the presence of the applicant may be secured before the trial court by placing adequate conditions.

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 of the case, I am of the considered view that applicant has made out a case for bail. The bail application is thus **allowed**.

11. Let the accused/applicant- **Golu Patel @ Brajendra** 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.

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 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 :- 18.11.2023

Praveen