

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 7914 of 2023

Applicant :- Dileep Kumar

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

Counsel for Applicant :- Pranav Pandey, O.P. Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Supplementary affidavit, filed on behalf of the applicant, is taken on record.
2. The State in its counter affidavit at page-21 has enclosed the communication sent by the concerned police station pertaining to service affected upon the complainant/opposite party no. 2. Thus, the opposite party no. 2 appears to have been sufficiently served. However, she is not represented.
3. Heard Mr. O.P. Tiwari, 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- **Dileep Kumar** for grant of bail in Case Crime No.093 of 2023, under Sections 376 and 506 IPC read with Section 3/4 POCSO Act, 2012 lodged at Police Station Ajgain, District Unnao, during trial.
5. 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.
6. It is further submitted by the learned counsel for the applicant that the FIR of the instant case has been lodged by the prosecutrix herself with the allegations that she is aged about 17 years and while she was going to attend the school, the applicant started intimidating her and had established sexual relation against her will and also intimidated her on the pretext of making her obscene video viral and also that if she will not obey him he will upload the video on internet and also that on 14.04.2023 he has taken her to Pachhi Vihar, Ring Road and established sexual relations with her. In her statements recorded

under Sections 161 and 164 CrPC, the prosecutrix fortified the allegations, as levelled in the FIR.

7. Learned counsel, while drawing attention of this Court towards the statement of the prosecutrix recorded under Sections 161 and 164 CrPC, submits that it is admitted to the prosecutrix that for the last many months she was having sexual relations with the applicant and the applicant is also a student of intermediate (class-xii) and aged about 19 years. It is vehemently submitted that the prosecutrix was a consenting party which is evident from perusal of the statement given by her under Section 164 CrPC before the Magistrate wherein she stated that on 14.04.2023 she had gone to meet the applicant and they also cohabited and when she returned this was known to her parents as someone had seen her with the applicant on which she had stated the whole story to her mother. It is vehemently submitted that though the prosecutrix was not major at the date and time of the incident and was aged around 16 years and 09 months old and as per ossification test she was around 19 years old as per medical certificate issued by the concerned Chief Medical Officer, but she was having sufficient intellect to understand her welfare and the nature of the act.

8. By drawing attention of this Court towards the call-details placed on record as Annexure SA-1 to the supplementary affidavit dated 16.10.2023 filed today, it is highlighted that the prosecutrix and the applicant were in a relationship and, it was the prosecutrix who was regularly calling the applicant. It is further submitted that the applicant is languishing in jail in this case since 16.04.2023 and he is not having any previous 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.

9. Learned A.G.A., however, opposes the prayer of bail of the applicant on the ground that the applicant has committed a heinous offence and, therefore, he is not entitled to be released on bail.

10. Having heard learned counsel for the parties and having perused the record, it is evident that the age of the prosecutrix as per educational credentials is 16 years and 09 months and in ossification test her age has been assessed as 19 years. Though the prosecutrix was not major, but appears to be of the age where she may be assumed to be having sufficient intellect. The applicant is also shown to be 19 years of age and also stated to be a student of intermediate (class-xii). Highlighting some portion of statement of the prosecutrix recorded under Section

164 CrPC, it is vehemently submitted that the prosecutrix was a consenting party and when someone had seen her going with the applicant and relationship was known to her parents, the FIR has been lodged. The applicant is languishing in jail in this case since 16.04.2023 without any previous 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.

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-**Dileep Kumar**, 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.

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[Mohd. Faiz Alam Khan, J.]

Order Date :- 2.11.2023

MVS/-