

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8463 of 2023

Applicant :- Anil Kumar

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

Counsel for Applicant :- Dilip Kumar,O.P. Tiwari

Counsel for Opposite Party :- G.A.,Adhyatm Singh,Amarnath Sinha,Kuldeep Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri O.P. Tiwari, learned counsel for the accused/applicant, learned A.G.A. for the State as well as Shri Adhyatm Singh, learned counsel appearing for the informant/complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Anil Kumar** for grant of bail, in Case Crime No. 69 of 2023, under Sections 504, 506, 376 IPC & Section 3/4 of POCSO Act and 3(2)(v) of S.C./S.T. Act, Police Station- Purwa, District Unnao, during trial.

3. 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.

4. It is further submitted that the FIR of this case has been lodged by the father of the prosecutrix/victim alleging therein that on 28.2.2023, the applicant had dragged his daughter aged about 16 years in an agricultural field and attempted to commit rape on her and on an alarm raised by her, he (complainant) arrived at the spot on which the applicant had left the scene by intimidating him and his family members. The statements of the prosecutrix/victim were recorded under Sections 161 & 164 CrPC wherein she alleged commission of rape by the applicant.

5. Highlighting the above facts, it is vehemently submitted that in the FIR lodged by the father of the prosecutrix/victim, there is no whisper about the commission of rape and allegations are confined to molestation or at the most attempt to commit rape, while in her statements recorded under Sections 161 & 164 CrPC, the prosecutrix/victim has improved the version of the incident by saying that she has been raped by the applicant.

6. Elaborating further, it is submitted that the statements of the prosecutrix/victim recorded under Sections 161 & 164 CrPC could not be believed because of making material improvements and inherent contradictions.

7. It is further submitted that in her statements recorded under Sections 161 CrPC, she stated that she had accompanied the applicant in an orchard herself, while in her statement recorded under Section 164 CrPC, she stated to have been dragged into the orchard and also that on the same day, when the sexual assault, at first, was committed on her, a mobile phone was given by the applicant to her and by making call on that mobile phone, she was also called by the applicant on 16.1.2023 and 17.1.2023 and on these dates also, rape was committed on her and when her maternal aunt had seen her talking to the applicant, her father came to know about these facts and thus, the FIR was lodged against the applicant.

8. It is vehemently submitted that the FIR of this case has only been lodged as the prosecutrix/victim was seen talking to the applicant. The medical examination reports of the prosecutrix/victim are clean and no abnormality or injury of any kind has been noticed therein. The date of birth of the prosecutrix/victim is shown as 16.4.2006 in the school records, whereby she is coming about 16 years and 10 months and in absence of any basis on the basis of which the date of birth recorded in the school records, the same may not be deemed conclusive. The age of the prosecutrix/victim through ossification process has been assessed as 17 years and having regard to the two years variable either side with regard to the age determined/assessed through ossification process, the prosecutrix/victim may be major at the date and time of the incident and since she was a consenting party, no offence in fact has been committed by the applicant.

9. It is further submitted that the applicant is in jail in this case since 7.3.2023 and he is not having any criminal antecedents. Charge sheet in the matter has already been filed. It is also submitted that the prosecutrix/victim as well as two prosecution witnesses have been testified before the trial court and now, there is no apprehension that the prosecution witnesses may be pressurized by the applicant or after release on bail, he may flee from the process of law or may otherwise misuse the liberty. Moreover, the prosecutrix/victim in her statement recorded before the trial court, has not alleged commission of rape on the date of which she has alleged commission of rape in her statements recorded under Sections 161 & 164 CrPC.

10. Learned A.G.A. opposes the prayer for bail of the applicant

on the ground that the applicant is an accused of committing heinous offence and the prosecutrix/victim being minor was not capable of giving her consent.

11. Similarly, learned counsel for the informant/complainant opposes the prayer for bail of the applicant by showing the age of the prosecutrix/victim as 16 years and 10 months and also that she was not in a position to give her consent.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that on the basis of the date of birth of the prosecutrix/victim recorded in the school records, she is coming about 16 years and 10 months of age at the date and time of the incident. She was also subjected to ossification test, by which her age has been assessed as 17 years. The defence of the applicant appears to be that the date of birth of the prosecutrix/victim shown in the school records may not be deemed conclusive and the same is open to be determined by the trial court. The medical reports of the prosecutrix/victim are clean and no abnormality or injury of any kind has been noticed therein. There are certain contradictions in the statement of the prosecutrix/victim vis-a-vis her statement recorded before the trial court and her statements recorded under Sections 161 & 164 CrPC. However, the same may be appreciated by the trial court at an appropriate time and no opinion even prima facie, may be given by this Court with regard to them at the time of adjudicating the plea of bail of the applicant. The applicant is in jail in this case since 7.3.2023 without any criminal history. Charge sheet in the matter has already been filed. Presence of the applicant could be secured before the trial court by placing any adequate conditions.

13. 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**.

14. Let the applicant- **Anil Kumar** 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.

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

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

17. 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 :- 22.12.2023

Shravan