

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9291 of 2022

Applicant :- Ajay Kumar

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

Counsel for Applicant :- Ashok Kumar Shukla, Manoj Kumar Singh, Nripendra Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per communication sent by the Chief Judicial Magistrate, Bahraich the opposite party no.2 has been sufficiently served, however, no one is present on her behalf.

2. Heard Shri Manoj Kumar Singh, 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- **Ajay Kumar** for grant of bail, in Case Crime No. 177 of 2022, under Sections 363, 366, 342, 376, 506, 323 IPC, Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2) 5 of the SC/ST Act, Police Station Motipur, District Bahraich, during trial.

4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. FIR of the case has been lodged by the father of the prosecutrix against the applicant along with other accused persons, who have enticed away his niece, aged about 14 years on 7.4.2022 at 7.00 A.M. in the morning. The prosecutrix has recovered on 19.5.2022 and her statements under Sections 161 and 164 Cr.P.C. was recorded wherein she has stated her age 17 years, 5 months and 18 days and also that she had accompanied the applicant with her free wish and will and they had gone to Delhi and thereafter Gurgaon where they remained in the rented accommodation. In her statement recorded under Section 161 Cr.P.C. she has not imputed any allegation of rape while in the statement recorded under Section 164 Cr.P.C. she has alleged that they have also cohabited and she was also physically assaulted.

5. It is vehemently submitted that even if the age of the

prosecutrix as shown in her educational credential is taken on its face she is coming of almost 17 years and thus she was having sufficient intellect and she has accompanied the applicant with her own consent and travelled many cities and also returned back with him, it cannot be inferred that she was not a consenting party and thus the prosecutrix was though minor but was of the age she can understand her welfare and nature of the act and therefore no offence has been committed by the applicant.

6. It is further submitted that the applicant is in jail in this case since 19.5.2022 and no prosecution witness has been testified by the trial court and he is not having any criminal antecedent 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.

7. Learned A.G.A., on the other hand submits that the applicant is accused of committing heinous offence, therefore he is not entitled to be released on bail.

8. Having heard learned counsel for the parties and having perused the record, it is reflected that as per the High School Certificate the prosecutrix was 17 years of age at the date and time of the incident. She has refused to undergo medical examination and in her statement recorded under Section 161 Cr.P.C. she admitted that she has accompanied the applicant and had travelled with him to many cities and she was recovered after 42 days of lodging of the First Information Report and on this basis it is submitted that the prosecutrix was a consenting party and as she was at the verge of majority, the offence of rape may not be attracted against the applicant. The applicant is in jail in this case since 19.5.2022 and he is not having any criminal antecedent. His presence may be secured before the trial court by placing adequate conditions.

9. 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**.

10. Let the applicant- **Ajay 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.

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

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

13. 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 :- 12.10.2023

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