

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 8943 of 2023

Applicant :- Pawan Kumar @ Monu

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

Counsel for Applicant :- Ram Singh

Counsel for Opposite Party :- G.A., Arpit Singh, Dharmendra Kumar Tiwari

Hon'ble Mohd. Faiz Alam Khan, J.

1. Mr. Arpit Singh, learned counsel for the complainant/informant/opposite party no.2 prays for some more time for the purpose of filing counter affidavit.
2. Perusal of record would reveal that power on behalf of opposite party no. 2 was filed way-back on 23.08.2023 and since then the counter affidavit is not filed by the opposite party no. 2. Thus, there is no substance in providing further time to the opposite party no. 2 to file counter affidavit, however, learned counsel for the opposite party no. 2 may participate in the proceedings.
3. Heard learned counsel for the accused-applicant, learned counsel for the complainant-informant-opposite party no. 2, Mr. Arpit Singh 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- **Pawan Kumar alias Monu** for grant of bail in Case Crime No.0141 of 2023, under Sections 363, 366, 376 and 504 IPC read with Section 3/4 POCSO Act lodged at Police Station Ibrahimpur, District Ambedkar Nagar, 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 that FIR of the instant case has been lodged by the mother of the prosecutrix on 02.06.2023 alleging therein that on 05.03.2023 at about 7 p.m. the applicant and other accused persons named in the FIR had abducted her daughter. The victim was recovered on 03.06.2023 and her

statements were recorded under Sections 161 and 164 CrPC wherein she stated to be in love with the applicant for the last 4-5 years and also that on the relevant day she had left her home and gone with the applicant to Faizabad and also solemnized marriage with him and thereafter they are living as husband and wife and she is also pregnant by one month.

7. Highlighting the above facts, it is vehemently submitted that the age of the prosecutrix as per ossification test has been determined as 18-19 years while as per her educational credentials her age is coming as of 17 years 04 months at the date and time of the alleged incident. Thus, *prima facie*, the prosecutrix was major at the date and time of the alleged incident and since she has not imputed any allegation against the applicant and had categorically stated to have solemnized marriage with the applicant and also that she is living happily with him, no offence, in fact, has been committed by the applicant. It is submitted that the applicant is languishing in jail in this case since 08.06.2023 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.

8. 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.

9. Learned counsel for the informant/complainant/opposite party no. 2 vehemently opposes the bail plea of the applicant on the ground that the prosecutrix was not major, therefore, her consent is immaterial. It is further submitted that the prosecutrix is not an educated girl and having regard to the manner in which the offence has been committed, the applicant is not entitled to be enlarged on bail.

10. Perusal of record would reveal that the prosecutrix as per her educational credentials was aged about 17 years and 04 months at the date and time of the alleged incident. Her age through radiological process has been ascertained as 18-19 years. Admittedly, the prosecutrix, after being recovered, has not imputed any allegation against the applicant, rather stated in categorical terms that she has solemnized marriage with the applicant at some Arya Samaj Temple. In this background, it is vehemently submitted that since the prosecutrix was almost major and she had chosen her partner and solemnized marriage and sexual relations have also been established with her consent, no offence, in fact, has been committed by the

applicant.

11. Be that as it may, keeping in view the statements of the prosecutrix recorded under Sections 161 and 164 CrPC as well as her age determined through ossification process and through educational credentials, a case of bail is made out in favour of the applicant. The applicant has been languishing in jail in this case since 08.06.2023 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.

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

13. Let the accused/applicant-**Pawan Kumar alias Monu**, 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.

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 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 :- 22.11.2023MVS/-