

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9643 of 2023

Applicant :- Suneel Kumar Yadav

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

Counsel for Applicant :- Manoj Kumar Singh

Counsel for Opposite Party :- G.A., Arun Kumar Mishra

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Manoj Kumar Singh, learned counsel for the accused-applicant; learned A.G.A. for the State as well as Shri Amit Pandey, Advocate holding brief for Shri Arun Kumar Mishra, learned counsel appearing for the informant/complainant/ opposite party No.2 and perused the record.

2. This bail application has been moved by the accused/applicant- **Suneel Kumar Yadav** for grant of bail, in Case Crime No.82/2023, under Sections 376, 323, 506 I.P.C. & Section 3/4 POCSO Act , Police Station- Sonwa, District- Shrawasti during trial.

3. 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.

4. It is further submitted that the F.I.R of this case has been lodged by the father of the victim on 13.05.2023 at Police Station- Sonwa, District- Shrawasti alleging therein that on 12.05.2023 at about 07.00 in the morning, his daughter aged about 15 years had gone to ease out. However, she was molested by the applicant and on an alarm raised by the victim, many villagers arrived at the spot to rescue her, on which the applicant fled away from the scene by intimidating the victim. The prosecutrix was medically examined on 14.05.2023, wherein no abnormality or injury of any kind was found on her person.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that a simple incident of *maar peet* has been given the colour of sexual assault. In this regard, the statement of the prosecutrix recorded under Section 161 Cr.P.C is highlighted wherein allegation of only molestation has been leveled, however, in the statement of the prosecutrix recorded under Section 164 Cr.P.C on 25.05.2023, for the very first time the allegation of rape has been levelled, which is an

improvement and after thought.

6. Elaborating further, the attention of this Court was also drawn towards the entry of '*Dial 112*' of date 12.05.2023 at 08.35 AM, a copy of which has been placed at page No. 30 of the supplementary affidavit and is also present in the case diary wherein the incident is shown only of teasing or molestation and there is no whisper about sexual assault.

7. It is submitted that this phone call to *dial 112* was made by the prosecutrix and on reaching the spot, it is mentioned in its report that the incident is only of molestation.

8. It is further submitted that age of the prosecutrix as per the ossification test is about 15 years while as per her educational credentials, her date of birth is 10.04.2009, but the tender age of the prosecutrix is not significant in this case as the allegation of rape has not been substantiated by any medical or other evidence. The applicant is in jail in this case since 03.06.2023 and he is not having any criminal history and there is no apprehension that after being released on bail the applicant 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 an heinous offence and having regard to the material/evidence available against the applicant, he is not entitled to be released on bail, but could not controvert the other factual submissions made by learned counsel for the applicant.

10. Learned counsel appearing for opposite party No.2, on the other hand, opposes the prayer of bail of the applicant on the ground that the applicant is accused of committing an heinous offence with a girl of very tender age and therefore, he is not entitled to be released on bail.

11. Perusal of the record would reveal that bone age of the prosecutrix is determined as 15 years while as per her educational credential, her date of birth is 10.04.2009, thus, no doubt that the prosecutrix was of tender age, however, in her statement recorded under Section 161 Cr.P.C. and in the first information report lodged by his father, there is no whisper about commission of sexual assault or rape and the allegations were confined only of molestation. However, in her statement recorded under Section 164 Cr.P.C., the prosecutrix has levelled the allegation of rape. The attention of this Court in this regard has been drawn on a report of '*Dial 112*', extract of which has been placed on record as well as the report is also available in the case diary wherein on a call made by the prosecutrix, the

police is shown to have arrived on the scene and the incident is shown to be of molestation. The applicant is in jail in this case since 03.06.2023 without any previous criminal history. The medical report of the prosecutrix is also clean. Thus, without commenting anything on the merits and demerits of the case and in the considered opinion of this Court, the facility of bail may safely be extended to the applicant. The presence of the applicant could be secured before the trial court by placing adequate conditions.

12. Having regard to the overall facts and circumstances of the case and 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- **Suneel Kumar Yadav** 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 of this Court on the merits of the case.

Order Date :- 26.10.2023
Gurpreet Singh