

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9778 of 2023

Applicant :- Subhash

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

Counsel for Applicant :- Rajendra Prasad Lodhi

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. The State in its counter affidavit has enclosed a copy of the communication sent by the Police Station Jarwal Road, Bahraich with regard to the service on opposite party no.2, thus the opposite party no.2. appears to have been served personally, however, he is not represented. It is also informed by learned AGA that in pursuance of the earlier order of this court, a report has been obtained with regard to the pregnancy of the prosecutrix and it has been informed in writing that the fetus was aborted as the prosecutrix had taken some medicine. The written information sent by the concerned police station is taken on record.

2. Heard Shri Rajendra Prasad Lodhi 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- **Subhash** for grant of bail, in Case Crime No. 112 of 2023, under Sections 363, 366, 376 IPC and 3/4 POCSO Act Police Station Jarwal Road, 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. The First Information Report of this case has been lodged by the father of the victim on 21.4.2023 at Police Station Jarwal Road, Bahraich, with regard to the incident occurred on 11.4.2023 alleging therein that his daughter aged about 17 years had left her house on 11.4.2023 at about 9.30 A.M. in the morning, thus the applicant was not named in the FIR.

5. It is further submitted that the prosecutrix was recovered on 5.6.2023 and her statement under Sections 161 and 164 Cr.P.C. were recorded, wherein she has not imputed any allegation s

against the applicant and stated that she was in love with the applicant and they decided to solemnize marriage and she herself had accompanied him and she also pregnant by two months and they were planning to fled away but they were apprehended.

6. It is vehemently submitted that the age of the prosecutrix has been written in the First Information Report as 17 years and as per her educational credentials her age is coming as little below 17 years, while in the Aadhaar Card which has been enclosed by learned AGA in the counter affidavit, the date of birth of the prosecutrix has been written as 7.2.2002. It is vehemently submitted that the date of birth written in the School Leaving Certificate of the prosecutrix, a copy of which has been placed at page no. 24 of the counter affidavit filed by the State may not be taken as conclusive as the same is pertaining to Class-VIII and it has not been shown as to where the prosecutrix was studying earlier and on what basis the date of birth of the prosecutrix was recorded in the School but she was of the age where she can understand her welfare and can also take decision for herself and since she was a consenting party, the applicant has not committed any offence.

7. It is further submitted that the applicant is in jail in this case since 6.6.2023. Charge sheet in this case has already been submitted 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.

8. Learned A.G.A., however, opposes the prayer for bail but could not dispute the other factual submissions made by the learned counsel for the accused-applicant.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that the age of the prosecutrix as per her educational credential is coming below 17 years and in her statement recorded under Section 161 and 164 Cr.P.C. she has stated her age to be of 17 years while in the FIR lodged by her father, her age has also been mentioned as 17 years and in the Aadhaar Card which has been enclosed by the State along with their counter affidavit, her date of birth is shown as 7.7.2002, whereby she appears to be major at the date and time of incident. However the age of the prosecutrix is yet to be determined by the trial court after providing an opportunity to lead evidence to the parties and the same at this stage may not be deemed conclusive. Admittedly the prosecutrix has not imputed any allegations against the applicant. At the time of her medical examination she was found pregnant by two months and now it is informed that the pregnancy had been

terminated as she had taken some medicines for fever

10. Be that as it may, the applicant is in jail in this case since 6.6.2023. He is not having any criminal history. His presence may be secured before trial court by placing adequate conditions, in result this bail application is **allowed**.

11. Let the applicant- **Subhash** 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.

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

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

14. 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 :- 28.10.2023

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