

**Court No. - 27**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 9784 of 2023

**Applicant :-** Anuruddh

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

**Counsel for Applicant :-** Rinku Kumar Verma, Dhirendra Pratap Singh, Diwakar Verma, Virendra Singh

**Counsel for Opposite Party :-** G.A., Ashok Kumar Srivastava

**Hon'ble Brij Raj Singh, J**

1. Rejoinder affidavit filed today by learned counsel for applicant is taken on record.

2. Heard learned counsel for applicant, Shri Avinash Srivastava holding brief of Shri Ashok Kumar Srivastava, learned counsel for the complainant as well as Shri Ranvijay Singh, learned A.G.A. for the State and perused the record.

3. This bail application has been filed seeking release of the accused/applicant **Anuruddh** on bail, who is involved in Case Crime No. 171 of 2023 under Sections 363, 366, 376 I.P.C and Section 3/4 POCSO Act, Police Station Biswaan, District Sitapur.

4. Learned counsel for the applicant submitted that the First Information Report was lodged on 20.04.2023, wherein it is alleged that on 16.04.2023, the daughter of the complainant was enticed away by the applicant along with co-accused Arvind and Deepu and no explanation of delay has been given by the complainant. He further submitted that the prosecutrix was recovered and her statement under Section 161 Cr.P.C was recorded, wherein she has stated that her marriage was settled with some other person and she was unhappy so she left her house and had gone to her friend's house, thereafter she was apprehended by the police. She further stated that she was not abducted or enticed away by any person.

5. Learned counsel for the applicant further invited attention of the Court towards the statement of prosecutrix recorded under Section 164 Cr.P.C, wherein she has changed the entire version of her statement recorded under Section 161 Cr.P.C and has stated that she had gone outside the house for the call of the nature where the applicant alongwith two other persons namely Anil and Vinod overpowered her and was taken to Dehradun and was confined in a room. Learned counsel for the applicant submitted that as per the medical report the age of the

prosecutrix is between 18 to 19 years though as per the school record, the prosecutrix is aged about 16 years and 10 months. It has been submitted by learned counsel for the applicant that on face value of 164 Cr.P.C statement of prosecutrix, it can be inferred that prosecutrix is consenting party for the reason that she had gone Dehradun along with the applicant and no alarm was raised by her. Learned counsel for applicant further stated that the prosecutrix came back without any protest and she had given statement under Section 164 Cr.P.C leveling allegation of rape under duress. Learned counsel for the applicant has further annexed the wedding card of the prosecutrix which is annexed as R.A-1, indicating that the marriage of the prosecutrix was fixed for 03.05.2023 and learned counsel has supported his argument to the extent that she was not happy with the settlement of marriage with other person that is why she had gone away. Learned counsel for the applicant has further submitted that there is no criminal history of the applicant and he is languishing in jail since 28.04.2023.

6. On the other hand, learned counsel for the complainant has opposed the prayer for bail and has stated that the statement of prosecutrix under Section 164 Cr.P.C goes to indicate that the prosecutrix was confined in a room and rape was committed with her by the applicant and he further submitted that as per school certificate, the prosecutrix is aged about 16 years 10 months and is minor and even if it is a case of consent, the consent of a minor has no meaning in the eyes of law.

7. Learned A.G.A has opposed the prayer of bail of the applicant and has submitted that the prosecutrix is minor and the applicant has committed the crime, therefore, bail is liable to be rejected.

8. Considering the facts and circumstances of the case, perusing the record, also considering the nature of allegations, arguments advanced by the learned counsel for the parties, the argument that statements of prosecutrix recorded under Section 164 Cr.P.C and under Section 161 Cr.P.C are contradictory to each other, the argument that even if the statement of prosecutrix under Section 164 Cr.P.C is taken on face value, it is a case of consent coupled with the fact that the age of the applicant is about 18 to 19 years and she was major at the relevant point of time, the argument that the prosecutrix did not raise alarm and had gone to Dehradun along with the applicant and returned without any protest, the argument that it is a case of consent, I find it to be a fit case for grant of bail.

9. Accordingly, the bail application is **allowed**.

10. Let the applicant **Anuruddh** be released on bail in the above case crime number on his furnishing a personal

bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against her under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

11. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

**Order Date :- 8.11.2023**  
DiVYa/Harshita