

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9928 of 2023

Applicant :- Shubham Singh

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

Counsel for Applicant :- Pallavi Mishra,P.K. Singh Bisen

Counsel for Opposite Party :- G.A.,Dilip Kumar Pandey

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri P.K. Singh Bisen, learned counsel for the accused-applicant; learned A.G.A. for the State as well as Shri Dilip Kumar Pandey, learned counsel appearing for opposite party No.2/ informant/ complainant and perused the record.

2. This bail application has been moved by the accused/applicant- **Shubham Singh** for grant of bail, in Case Crime No. 52/2023, under Sections 363, 366, 376 I.P.C. and 5/6 of the Protection of Children from Sexual Offences Act, 2012, Police Station- Shivratanganj, District- Amethi, 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 prosecutrix on 09.03.2023 alleging that his daughter aged about 15 years has been enticed away by the applicant. On being recovered the statements of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C., wherein she did not impute any allegation against the applicant and stated that she had left her home on her own and had gone to Lucknow with the applicant and they also solemnized marriage in Ayodhya in a temple and thereafter living as husband and wife.

5. Highlighting the above facts, it is vehemently submitted on behalf of the applicant that the prosecutrix as per her educational credential is aged about 16 years and 7 months at the date and time of the alleged incident, however, the said date of birth may not be deemed as conclusive in absence of any proof on the basis of which his date of birth has been recorded in the school record and even if her date of birth relied on by

the prosecution is taken as truthful, she was of the age where she can understand her welfare and also the nature of the offence and since she has not alleged any imputation against the applicant, no offence has been committed by the applicant.

6. It is next submitted that applicant is in jail in this case since 25.03.2023 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.

7. 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.

8. Shri Dilip Kumar Pandey, learned counsel appearing for opposite party No.2 vehemently submits that the prosecutrix was not of an age where she can give her consent and therefore her consent is immaterial and having regard to the age of the prosecutrix, the applicant is not entitled to be released on bail.

9. Perusal of the record would reveal that in school record, the date of birth of the prosecutrix has been shown as 20.07.2006 and the same has been doubted by learned counsel for the applicant on the ground that no basis has been shown in a certificate issued by the school showing as to on what basis the date of birth of the prosecutrix has been recorded in the school records and therefore, it is submitted that the real age of the prosecutrix is yet to be determined/ adjudicated by the trial Court after providing an opportunity of leaving evidence to the parties. Admittedly, the prosecutrix has not levelled any allegations against the applicant rather she stated to have accompanied him with her free wish and volition and have also entered into sexual relationship with her consent. The applicant is in jail in this case since 25.03.2023 without any previous criminal history. The presence of the applicant could be secured before the trial court by placing adequate conditions.

10. 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**.

11. Let the accused/applicant- **Shubham Singh** 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.

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 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 :- 21.12.2023

Gurpreet Singh