

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9970
of 2023

Applicant :- Vipin

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

Counsel for Applicant :- Pankaj Kumar Verma

Counsel for Opposite Party :- G.A.,A.N.Misra,Arunendra
Nath Mishra

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Pankaj Kumar Verma, learned counsel for the accused/applicant, Shri Arunendra Nath Mishra, learned counsel appearing for opposite party no.2 as well as learned A.G.A. for the State and perused the record.

2. This bail application has been moved by the accused/applicant- **Vipin** for grant of bail, in Case Crime No. 0093/2023, under Sections 363, 366, 376 (3) IPC and Section 5J(ii)/6 of POCSO Act, Police Station Kasimpur, District Hardoi, during trial.

3. 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 prosecutrix/ victim on 11.3.2023 at Police Station Kasimpur, District Hardoi, alleging therein that the applicant before this Court had enticed away his daughter aged about 15 years in the wee hours of the night of 09.03.2023. The prosecutrix/ victim was recovered and her statements was recorded under Sections 161 and 164 Cr.P.C. wherein she stated her age to be of 19 and 15 years, respectively and also that on 09.03.2023 at 12:00 AM in the night, she had accompanied the applicant to Lucknow where they solemnized marriage on 10.03.2023 and also that sexual relationship between them has been established with her free wish and consent and also that she is pregnant by one and half months.

4. Highlighting the above fact, it is submitted that the prosecutrix in her statements has not levelled any allegation against the applicant and has categorically stated to have accompanied the applicant on her own volition and also consented for sexual relations.

5. It is further submitted that though as per the educational credentials, date of birth of the victim is shown as 25.10.2007 whereby she comes of about 15 years and 4 months at the date and time of the incident but having regard to the fact that only on the basis of the certificate issued by the school Principal, the date of birth of the prosecutrix has been taken as 25.10.2007 and there is no basis shown on the basis of which the date of birth has been recorded in the School and through ossification test, the age of the prosecutrix has been assessed as 19 years and in the Aadhar Card and Ration Card of the prosecutrix, her date of birth has been assessed as 01.01.2004, whereby she appears to be major or of the age where she can understand her welfare and nature of the act and since she was a consenting party, no offence infact has been committed by the applicant.

6. Attention of this Court has also been drawn on some photographs enclosed with the bail application and also the certificate issued by the 'Arya Samaj' in order to show that the marriage between the prosecutrix and the applicant was solemnized and the age of the prosecutrix, keeping in view the photographs provided on record may not be 15 and ½ years as claimed by the prosecution and that she was a major.

7. It is further submitted that the applicant is in jail in this case since 13.05.2023 and he is not having any criminal antecedent. Charge sheet in this case has already been filed 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 of the applicant on the ground that the prosecutrix was of a very tender age and therefore her consent is immaterial and the date of birth of the prosecutrix recorded in the school certificate is immaterial for the purpose of assessing her age. It is further submitted that the C.W.C. in it's order dated 12.5.2023 has shown the age of the prosecutrix as less than 15 years.

9. Learned counsel for opposite party no.2 has also opposed the prayer of bail of the applicant on the ground that the prosecutrix was of a very tender age at the date and time of the incident and her consent is immaterial, more so she after appearing before this Court has clearly stated that her consent was obtained on the false promise of marriage extended by the applicant.

10. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecutrix after being recovered, in her statements recorded under Sections 161 and 164 Cr.P.C. has not alleged any kind of imputation against the applicant, wherein she has stated to have accompanied applicant on her own volition and also that the sexual relations between them were established with her free consent and further she has solemnized marriage with the applicant. The age of the prosecutrix as per the prosecution is about 15 and 1/2 years on the basis of the certificate issued by the school. This Certificate has been doubted by the applicant by placing on record the Aadhar Card and Ration Card of the victim wherein her age has been shown as 01.01.2004 and also the certificate issued by the Chief Medical Officer of Sitapur wherein after considering the radio-logical development in the bones of the prosecutrix her age has been assessed as 18-19 years. A document issued by the Arya Samaj has also been relied on, in order to show that the prosecutrix and the applicant have solemnized marriage. Photographs of the prosecutrix allegedly clicked at the time of such marriage has also been relied in order to show that by physical appearance, the age of the prosecutrix may not be less than 18 years.

11. In the considered opinion of this court, though a table of precedence has been provided under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 but as only the plea of the bail of the applicant is being considered by this Court, there may not be any bar in taking into consideration the other relevant documents/ evidence which may throw some light on the actual age of the prosecutrix, however, the final determination of the age of the prosecutrix is yet to be determined by the trial court after providing an opportunity to lead evidence to the parties. Therefore, no view even *prima facie* with regard to the age of the prosecutrix can be expressed by

this Court. Suffice is to say, that keeping in view the statement of the prosecutrix under Sections 161 and 164 Cr.P.C and also the fact that the applicant is in jail in this case since 13.5.2023, charge sheet has already been submitted, the facility of bail may be safely extended to the applicant. The bail application moved by the applicant is, thus, **allowed**.

12. Let the applicant- **Vipin** 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.

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

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

15. 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 :- 29.11.2023

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