

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 9961 of 2023

Applicant :- Sonu Alias Sunil Kumar

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

Counsel for Applicant :- Aman Kumar Shrivastav

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

- 1.Rejoinder affidavit filed by the applicant is taken on record.
2. The State in its counter affidavit has filed the copy of a communication sent by the concerned Police Station Khairabad, District Sitapur informing therein that the informant/ opposite party no.2 has been sufficiently served, however, the complainant/ informant is not represented.
3. Heard Shri Aman Kumar Shrivastav, learned counsel for the accused/applicant as well as learned A.G.A. for the State and perused the record.
4. This bail application has been moved by the accused/applicant- **Sonu Alias Sunil Kumar** for grant of bail, in Case Crime No. 141/2023, under Sections 363, 366, 376 IPC and 3/4 Protection of Children from Sexual Offences Act, Police Station Khairabad, District Sitapur, during trial.
5. 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 was lodged by the mother of the victim on 13.4.2023 at Police Station Khairabad, District Sitapur pertaining to the incident occurred on 11.4.2023 alleging therein that the applicant with the help of his family members has enticed away her daughter aged about 15 years and since then her whereabouts are not known. The victim as well as the applicant were recovered on 26.4.2023 and the statement of the prosecutrix was recorded under Sections 161 and 164 Cr.P.C. wherein she stated to be in a relationship with the applicant for the last two years and also that on the relevant day and time she had gone with the applicant with her free wish and will and they together had gone to Haryana and remained there and she also became pregnant by six months.

6. It is also stated that she had solemnized marriage with the applicant and wants to remain with him as his wife.

7. Highlighting the above facts, it is submitted by learned counsel for the applicant that statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. would evidently demonstrate that she was neither kidnapped or abducted by the applicant rather she had joined the company of the applicant with her free wish and will and therefore as they have solemnized marriage no offence in fact has been committed by the applicant.

8. It is further submitted that the age of the prosecutrix has been assessed through radio logical process as 15 years and having regard to the two years variable applicable to the age determined through ossification test, she may be of 17 years at the date and time of the occurrence and the reliance of the prosecution on a school leaving certificate obtained on 2.9.2023 may not be termed truthful as it has not been mentioned therein as to on what basis the date of birth of the prosecutrix was recorded in School records, more-so when the prosecutrix in her statement recorded before the Magistrate has stated her age to be of 16 years. Thus, though the prosecutrix was minor at the date and time of the incident but she appears to be having sufficient intellect to understand her welfare.

9. It is also submitted that the prosecutrix was also found pregnant at the time of her detention and despite the claim made by her parents she refused to go with them and as per her wish she was sent to Child Reform Home, however, subsequently she was given in the custody of her parents.

10. It is further submitted that the applicant is in jail in this case since 26.04.2023 and he is not having any criminal history. Charge sheet in the matter 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.

11. Learned A.G.A. on the other hand submits that consent of the prosecutrix is insignificant having regard to her age and therefore, the applicant is not entitled to be released on bail.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that as per the school record the age of the prosecutrix is coming as more than 15 years while as per her ossification test, her age has been assessed as 15 years while she in her statement recorded under Sections 161 and 164 Cr.P.C. had stated her age to be of 16 years, thus the

age of the prosecutrix is yet to be finally adjudicated by the trial court after providing an opportunity to lead evidence to the parties and the same may not be deemed conclusive at this stage. Admittedly the prosecutrix has not imputed any allegations against the applicant in her statement recorded under Sections 161 and 164 Cr.P.C. and it prima facie appears that the applicant and the prosecutrix were in relationship and the cohabitation between them had occurred with the free wish and will of the prosecutrix. A difference is required to be carved out between the cases of sexual assault committed forcibly and the cohabitation taken place between the two persons, who are of tender age, with their consent. In the instant case the applicant is also shown to be aged about 21 years and thus having regard to the facts and circumstances of the case and keeping in view the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C., in the considered opinion of this Court the case of bail is made out, in favour of applicant. The applicant is in jail in this case since 26.4.2023 and the charge sheet in this case has already been submitted. His presence may be secured before the trial court by placing adequate conditions.

13. 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 and demerits of the case, I am of the considered view that applicant has made out a case for bail. The bail application is **allowed**.

14. Let the applicant- **Sonu Alias Sunil Kumar** 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.

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

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

17. 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 :- 27.10.2023

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