

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 10314 of 2023

Applicant :- Ranjeet

Opposite Party :- State Of U.P Addil. Chief Secy. Home Civil Sectr. Lko. And 3 Others

Counsel for Applicant :- Harish Chandra

Counsel for Opposite Party :- G.A.,Chandan Srivastava,Pranshu Agrawal

Hon'ble Brij Raj Singh,J.

1. Heard Shri Harish Chandra, learned counsel for the applicant, Shri Chandan Srivastava, learned counsel for complainant as well as Shri Ranvijay Singh, learned A.G.A. for the State and perused the record.

2. This bail application has been filed seeking release of the accused/applicant **Ranjeet** on bail, who is involved in Case Crime No. 257 of 2022 under Sections 363, 366, 376 I.P.C and Section 3/4 POCSO Act, Police Station Sohramau, District Unnao.

3. Learned counsel for the applicant submitted that the First Information Report has been lodged by the father of the prosecutrix, wherein it is mentioned that the prosecutrix is minor and she has been enticed away by some unknown person. Learned counsel for applicant further stated that the statement of prosecutrix under Section 161 Cr.P.C was recorded, wherein she has stated that she is aged about 20 years and she had gone along with the applicant to Lucknow, thereafter, they performed marriage. She further deposed that no forceful physical relation was established by the applicant. Learned counsel for applicant has drawn attention of the Court towards the statement of prosecutrix recorded under Section 164 Cr.P.C, wherein she has stated that she had left her house out of anger and had gone to Lucknow and was residing in a rented house. In her statement under Section 164 Cr.P.C, the prosecutrix has not stated anything adverse against the applicant and has not levelled allegation of rape against him.

4. Learned counsel for applicant has invited attention of the Court towards the Radiological Report, which indicates the age of prosecutrix as 16 years. He further submitted that the upper age limit benefit (of two years) may be granted to her and it may be inferred that the at the relevant time, the prosecutrix was major. Learned counsel for applicant further relied on paragraph 22 of the judgment of Hon'ble Supreme Court in case of **P. Yuvaprakash versus State Rep. By Inspector of**

Police in Criminal Appeal No.(s) 1898 of 2023 which states that if penetration does not takes place, the provision of POCSO will not be applicable. He further submitted that after looking into the statement of prosecutrix under Section 161 Cr.P.C and Section 164 Cr.P.C, it cannot be inferred that the applicant has committed rape with prosecutrix and at the most, it is case of consent coupled with the fact that two years upper age limit benefit is given and the prosecutrix was major at the relevant time. Learned counsel for applicant further submitted that the statement of house owner Prem Prakash Pal and other independent witness namely Mohd. Riyaz, indicates that the applicant and prosecutrix were living together as husband and wife. He further submitted that it is a case of consent and not a case of rape and the applicant has been falsely implicated in the present case. Learned counsel for the applicant further stated that there is no previous criminal history of the applicant and he is languishing in jail since 27.03.2023.

5. Both learned A.G.A for the State as well as learned counsel for complainant have opposed the prayer for bail stating that the prosecutrix was minor at the relevant time, and the consent of a minor has no relevance in the eyes of law, therefore, the case is coming within the purview of rape and bail is liable to be rejected.

6. 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 it is a case of consent, the argument that the statements of prosecutrix recorded under Section 161 Cr.P.C and 164 Cr.P.C, are contradictory to each other, the argument that no allegation of rape against the applicant has been levelled by the prosecutrix in her statement recorded under Section 164 Cr.P.C, the argument that as per radiological report, the prosecutrix was major at the relevant time, the argument that marriage was performed between prosecutrix and the applicant, the argument that the prosecutrix has not supported the prosecution case, I find it to be a fit case for grant of bail.

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

8. Let the applicant **Ranjeet** 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.

9. 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