

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11578 of 2022

Applicant :- Neeraj

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

Counsel for Applicant :- Prabhu Sharan, Prabhaat Kumar Tripathi, Rajesh Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the applicants, Sri Ran Vijay Singh, learned A.G.A. for the State and perused record.
2. In compliance of order of this Court dated 20.11.2023, the Investigating Officer, Sub-Inspector Sanjeev Kumar, PS Malihabad, district Lucknow is present. His personal appearance is exempted. No need for further action.
3. The present bail application has been filed for bail in Case Crime No.049 of 2022, under Section 363, 366, 342, 376, 506 IPC and Section 5/6 POCSO Act, PS Malihabad, district Lucknow.
4. Learned counsel for the applicant has submitted that FIR has been lodged by the father of prosecutrix against unknown person under Section 363 IPC. Thereafter, the prosecutrix was recovered and her statement under Section 161 CrPC was recorded in which she has specifically stated that she was beaten by her parents and that is why, she had left the house and gone to Surajkund along with her friend and worked as a factory worker. Thereafter, her statement was recorded under Section 164 CrPC and version of statement under Section 161 CrPC is slightly changed because under Section 164 CrPC, the prosecutrix has deposed that on 1.2.2022, on the call and threat of applicant, she had gone along with applicant to house of his Mausi (maternal aunt) at Aldam. She further deposed that on 2.2.2022, the applicant had taken her to Saharanpur Rampur Maniharan and he made her captive and also committed rape upon her.
5. Learned counsel for the applicant has submitted that it is a case of consent and the version of prosecutrix under Section 164 CrPC is contradictory to her version under Section 161

CrPC and at the most, on the face value, it is a case of consent because no alarm or protest was raised by the prosecutrix and she had gone to Mausi's house and thereafter, she was taken to Saharanpur Rampur Maniharan which is unbelievable that a girl of 17 years of age was going along with the applicant without raising any alarm. He has further submitted that medical report is not supporting the prosecution case because there is no internal or external injury found on the person of prosecutrix. The ossification test conducted on 13.9.2023 indicates that the prosecutrix is of 18 years of age and the incident took place on 1.2.2022 and at the relevant time also, she was 17 years of age. He has further submitted that benefit of two years upper age limit may be extended and it may be inferred that the prosecutrix was major at the relevant time. He has submitted that the applicant has no criminal history and he is in Jail since 20.5.2022.

6. On the other hand, learned A.G.A. has opposed the bail and has submitted that it is a case of rape and bail should not be granted.

7. Considering over all facts and circumstances of the case, the argument that there is contradiction between the statement of prosecutrix under Section 161 CrPC and 164 CrPC, the argument that it is a case of consent, the argument that benefit of two years upper age limit may extended and it may be inferred that the prosecutrix was major at the relevant time, it is a fit case for bail.

8. Let the applicants, Neeraj be released on bail in the above case crime number on their furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicants shall file an undertaking to the effect that they 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 applicants shall remain present before the trial court on each date fixed, either personally or through their counsel. In case of his absence, without sufficient cause, the trial court may proceed against them under Section 229-A of the Indian Penal Code.

(iii) In case, the applicants misuse the liberty of bail during trial and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear

before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against them in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicants 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 applicants 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 them 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 :- 23.11.2023
Rajneesh JR-PS)